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THE LIABILITY CRISIS FOR MONTANA MUNICIPALITIES
WITH OVER 25,000 RESIDENTS

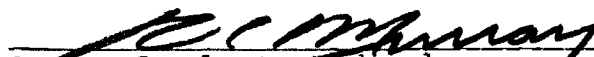
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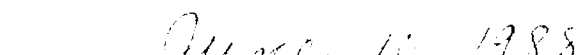
Sylvia D. Graft

B.S., College of Great Falls, 1984

Presented in partial fulfillment of the
requirements for the degree of
Masters of Business Administration
1988


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CHAPTER 1

INTRODUCTION

The main focus of this paper is the question, "Does a liability insurance crisis exist for Montana municipalities with over 25,000 residents?"

This study's first step is to develop a workable and accurate definition for "the liability insurance crisis for municipalities." Often it is best to examine the parts of a concept to determine its meaning.

Liability is defined as "broadly, any legally enforceable obligation."¹ A city, for example is liable for damages when the city's sewer system backs up into a resident's basement. The city has a legally enforceable obligation to provide a working sewer system.

Liability insurance is "any form of coverage whereby the insured is protected against claims of other parties from specified causes."²

Now, let's turn our attention to the word "crisis." This part of the phrase is the most ambiguous. Webster's dictionary defines crisis as "a crucial situation whose outcome decides whether possible bad consequences will follow."³

Working from these definitions, the following definition has evolved "The liability insurance crisis for municipalities is a

crucial situation whose outcome decides whether coverage will be provided and can be obtained to cover legally enforceable obligations and protect municipalities, a city, town, etc., having its own incorporated government."⁴

The determination whether a crisis exists rests on two major points:

1. Availability of liability insurance for Montana municipalities. A 1985 study by Insurance Services Office, located in New York City, a provider of statistical data to the insurance industry, "projected that available property/casualty insurance may fall short of projected demand by 62 billion dollars in the next three years. This shortage of insurance coverage has made underwriters reluctant to write municipalities. Available insurance capacity will be used for less risky lines of insurance."⁵

2. Affordability of liability insurance for Montana municipalities. In the summer of 1985, the United States Conference of Mayors conducted a survey of thirty-nine cities. "Over half the cities were quoted premium increases of over 100 percent, and 16 were quoted increases greater than 200 percent."⁶

This paper will focus on the liability insurance crisis for Montana municipalities with over 25,000 residents. A 1986 listing of Montana cities and counties with over 25,000 residents is found in Table 1.

TABLE 1
MONTANA CITIES AND COUNTIES WITH
OVER 25,000 RESIDENTS

<u>City</u>	<u>Population</u>
Billings	70,200
Butte-Silver Bow*	35,300
Great Falls	57,700
Missoula	35,400
Helena	25,200

<u>County</u>	<u>Population</u>
Cascade	80,200
Flathead	56,500
Gallatin	48,000
Lewis and Clark	46,900
Missoula	77,000
Ravalli	26,000
Yellowstone	120,000

SOURCE: Rand McNally & Company, 1986 McNally Commercial Atlas and Marketing Guide, 117th ed.

*City and county governments consolidated.

Methodology

This research approach is based on extensive reading and personal interviews with key professionals in the Montana municipality liability insurance marketplace.

The problems encountered while researching the topic were many and complex. First, the vast majority of insurance industry data is based on nationwide experience. The existence of the liability crisis rests on two major points, the availability and affordability of liability insurance in Montana. A crisis exists nationwide. Montana is no exception to this nationwide occurrence. The existence of alternative markets and their establishment is a direct response to the Montana municipality liability crisis.

Second, pricing information is virtually impossible to obtain. Working as a commercial lines underwriter for USF&G Insurance Company places the researcher in a unique position. Competitors are willing to discuss the crisis, but are unwilling to reveal their pricing methods because that is a competitive tool, and the researcher represents part of the competition. Even if pricing information could be obtained, it would be impossible to successfully integrate it into this paper. If the researcher stated the liability premium for Flathead County under a USF&G policy equals "X" dollars, and stated the premiums for the City of Helena under the Montana Municipality Insurance Authority equals "Y" dollars and under the Montana Association of Counties Program

(PENCO) the premium for Lewis and Clark County equals "Z" dollars, it would be like comparing apples to oranges to bananas.

In addition, each municipality has unique and varying exposures to risk. Populations differ, public services provided vary, and loss histories are unique and individual.

Each program provides different amounts and types of coverage. A standard insurance company might provide a million dollars limit of liability, another market might provide only half a million dollars limit. It would be like comparing the pricing of a Chevy Nova to a Cadillac Seville. We know the Cadillac is more expensive, but how do we prove it is worth the extra expense?

We realize a million dollar limit of liability provides more coverage, yet how can we provide the true value of that additional half million dollar limit of coverage?

The issue of affordability is open to interpretation. It seems one cannot state that any one insurance program is more affordable than any other insurance program. The question of affordability is also complex. Webster's definition of afford is "to bear expenses without serious inconvenience."⁷

When a city closes a playground because it cannot afford liability insurance, is that a serious inconvenience or just a minor sacrifice? The critical issue of affordability is a grey area and one that must be left to the judgment of the actual buyers of the Montana municipality liability coverage. It is assumed that they are rational decision-makers and that their

purchase decision maximizes their insurance dollar. By documenting their choice of coverage a strong indication of affordability is shown.

Organization of Paper

The following chapters illuminate the difficulties encountered by both municipalities and insurance companies in obtaining and writing liability insurance coverage.

In Chapter II, trends in the insurance industry are investigated. Concepts such as cash flow underwriting, interest rates, premium levels, and reinsurance are discussed. Chapter III views the legal environment and trends causing the liability problem.

The Montana state insurance regulatory system is covered in Chapter IV, followed by a review of the underwriting process in Chapter V. Tort reform in Montana is the subject of Chapter VI.

In Chapter VII, several strategies of municipalities for providing liability insurance coverage are given. Chapter VIII looks at the risk pool of Montana Counties while Chapter IX reviews actions taken by several state legislatures to ameliorate the liability problem. The paper ends with a summary of findings and conclusions in Chapter X.

ENDNOTES

1. USF&G Insurance Company, A Glossary of Selected Insurance Suretyship and Legal Terms (Baltimore: Education and Planning Department, 1974), p. 50.
2. Ibid., p. 51.
3. Webster's New Twentieth Century Dictionary Unabridged, 2nd ed.
4. Ibid.
5. U.S. Department of Justice, Office of Attorney General, Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in Insurance Availability and Affordability, by Richard K. Willard and Robert Z. Willmore (Washington D.C.: Government Printing Office, 1986).
6. Ibid.
7. Webster's New Dictionary, 2nd ed.

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CHAPTER 2

TRENDS IN THE INSURANCE INDUSTRY

Many in the legal profession point to the mismanagement of insurance companies as a major factor leading to the liability insurance crisis. The following assertion is typical:

Despite the ever-increasing data base and literature to the effect that the liability insurance crisis is a creature of the insurance industry's own greed and mismanagement, juries, victims, judges and lawyers remain under attack by special interest groups which are determined to mislead the public into permanently altering a civil justice system that has served well both this country and this state for as long as they have been in existence.¹

The preceding quotation is the opening paragraph of the President's Message in Trial Trends, a quarterly publication of the Montana Trial Lawyers Association, prepared by Mr. Tom L. Lewis. While Mr. Lewis could be considered a biased source, he raises a major point which must be addressed.

The insurance industry appears to have exhibited "greed and mismanagement." Here it seems Mr. Lewis is referring to the application of cash-flow underwriting.

Cash Flow Underwriting

Cash-flow underwriting is the practice of selling insurance coverage at cut-rate prices with the intent of making a profit on reinvestments.

A few years ago interest rates hovered around 20 percent and cash-flow underwriting began. The insurance industry strategy was simply--cut prices to bring in as many premium dollars as possible and the anticipated investment income would more than subsidize claim losses. For the better part of seven years, the insurance industry has been engaged in a brutal price war.

During the early 1980's, the price for commercial insurance was decreasing, sometimes sharply, as insurers vied for premium dollars to invest at the high interest rates then in effect. At the time, commercial and municipality customers did not complain. Indeed, many realized that commercial insurance in the United States was being sold below cost, even when investment income was considered.²

In 1981, underwriting losses were \$6.3 billion, with investment gains of \$13.2 billion. Cash-flow underwriting has a midas touch.

However, by 1984, the profit picture was far less golden. Underwriting losses of \$21.5 billion outpaced investment income that was only \$17.7 billion. In 1985, losses were \$24.7 billion, investment income \$19.5 billion³

Table 2 below presents premiums, loss data and investment income for the property casualty insurance industry for the period 1981 through 1985.

Commercial General Liability (CGL) coverage includes the line of insurance that covers the liability for municipalities. The experience of this line is summarized in Table 3.

The rise in insolvencies is indicative of the gravity of the situation. According to the National Association of Insurance Commissioners, the insurance industry experienced from 1969 to 1980 an average of three insolvencies per year in multi-state companies. In 1984, the number increased to 14 and 1985 was a record of 21. As of April, 1986, six were reported, with more expected.⁴

The insurance industry adopted cash-flow underwriting with the intention of greatly improving its profit picture. Instead of improving the profit picture, it has led to the dismantling of

TABLE 2
INSURANCE INDUSTRY DATA

Year	Net Premiums Written (000)	Loss and LAE (000)	Expenses (000)	Statutory Underwriting Loss After Policyholder Dividends (000)	Investment Income
1981	\$ 98,805,725	75,764,229	27,132,052	-6,323,534	13,200,000
1982	103,115,653	82,152,241	28,996,122	-10,415,751	14,906,655
1983	107,802,698	87,719,055	30,799,231	-13,285,049	15,973,234
1984	117,743,957	103,720,652	32,980,082	-21,455,300	17,700,000
1985	114,186,420	118,572,435	37,585,418	-24,700,000	19,500,000

SOURCE: U.S. Department of Justice, Office of the Attorney General, Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in Insurance and Affordability, by Richard K. Willard and Robert Z. Willmore (Washington, D.C.: Government Printing Office, 1986), p. 19.

TABLE 3
COMMERCIAL GENERAL LIABILITY COVERAGE

Year	Net Premium Written (Billions)	Loss and LAE (Billions)	Underwriting Expenses (Billions)	Statutory Underwriting Loss After Policyholders Dividends
1981	\$ 6.0	5.1	1.8	-1.0
1982	5.6	5.4	1.8	-1.7
1983	5.7	6.0	1.8	-2.1
1984	6.5	7.8	1.9	-3.2
1985	11.1	13.2	2.7	-4.6

SOURCE: U.S. Department of Justice, Office of the Attorney General, Report of the Tort Policy Working Group, p. 19.

profitable companies and an atmosphere of rebuilding and cautiousness.

We might think cash-flow underwriting brought about the liability insurance crisis in solo. However, it was a combination of factors that led to the crisis.

Economic Relationship Between Interest Rates and Premium Levels

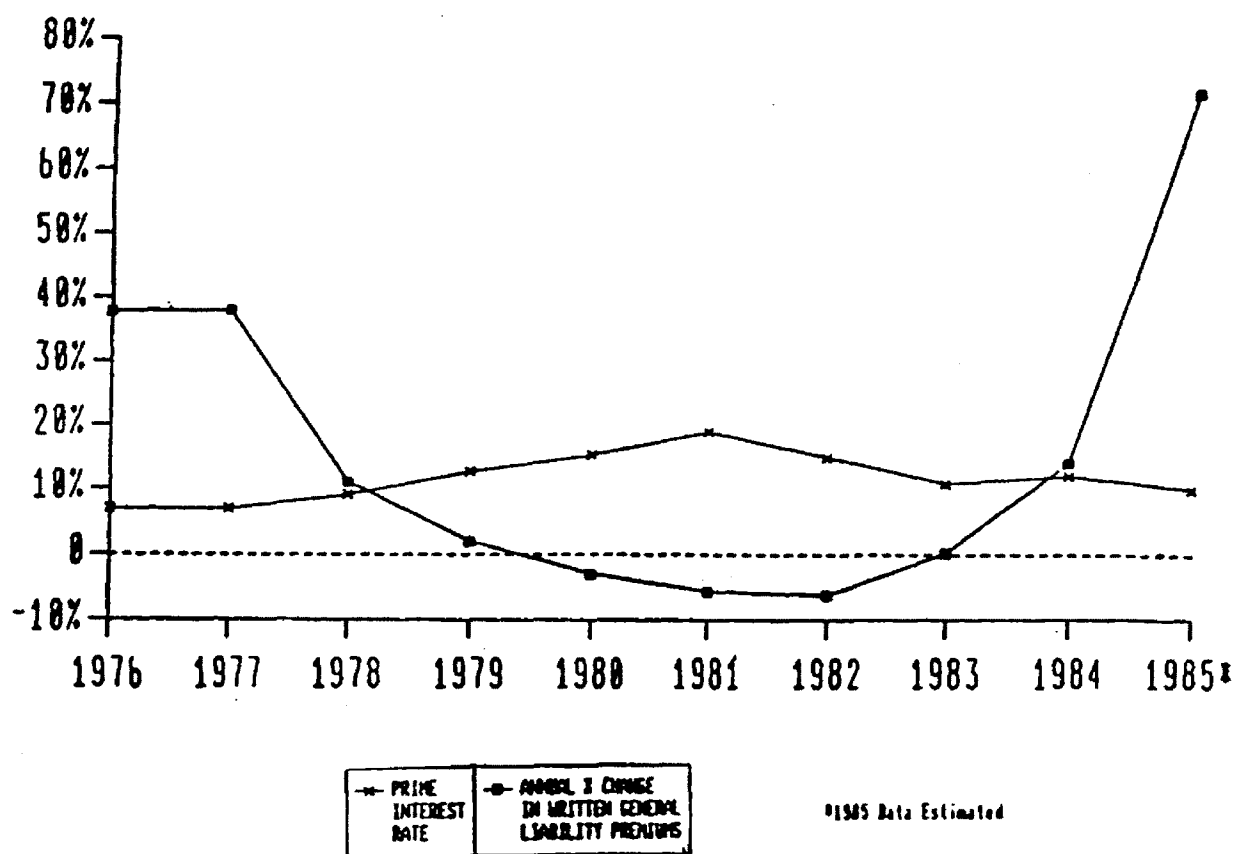
When discussing the effects of cash-flow underwriting, it is important to discuss the economic relationship that exists between interest rates and premium levels.

There is an obvious inverse relationship between premiums and the prevailing interest rate. A major part of an insurance company's profit picture is the income it makes from investing premium dollars. Profits arise from the differential between premiums and payout of the incurred liabilities. Premiums tend to be lower when interest rates are high, since more of the insurance company's income comes from a return on investment. However, premiums tend to increase as interest rates drop, since insurance companies now become more dependent on the premium principal to cover the anticipated payout. As interest rates fell during the mid-1980s, insurance premiums inevitably increased.

This inverse relationship is illustrated by Exhibit 1 shown below which compares the prime rate in 1976 to 1985 to the annual percentage change to the total Commercial General Liability premiums written by the insurance industry in each of those years. Exhibit 1 demonstrates that the rate of growth of each of those

EXHIBIT 1

PERCENTAGE CHANGE IN CGL PREMIUMS
COMPARED TO INTEREST RATES



SOURCE: U.S. Department of Justice, Office of the Attorney General, Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in Insurance Availability and Affordability, by Richard K. Willard and Robert Z. Willmore (Washington, D.C.: Government Printing Office, 1986), p. 26.

years. Exhibit 1 demonstrates the inverse relationship between the rate of growth of written premiums and the movement of the prime interest rate.

Evaporation of Reinsurance

Another development in the insurance industry which helped bring the crisis to public awareness at an earlier date was the evaporation of reinsurance. Reinsurance is "the practice of insurance companies protecting themselves against excessive loss. This is done by reinsuring with other companies, the portion of the assumed liability that exceeds their net line."⁵ Net line is defined as "the amount of liability the insurance company is prepared to expose to loss for its own account."⁶

It is insurance for insurance companies. When a company writes a large high-risk policy, such as for a municipality, the company turns to larger companies for reinsurance. At the same time as interest rates were falling, the reinsurance companies such as Lloyd's of London curtailed their reinsurance treaties with American insurance companies. "As of April 3, 1985, the casualty facultative reinsurance capacity decreased \$100.5 million in the United States."⁷ The reinsurers pulled back because of the huge losses sustained in an unpredictable manner. This led to a domino effect with primary insurers having to pull out of the market. The insurance industry simply lost its capacity to underwrite high-risk policies. An insurance company without its reinsurance treaty is somewhat like a car without an engine. It may look nice but cannot go anywhere.

Loss Recoupment Theory

Many in the legal profession and other critics of the insurance industry believe the "liability insurance crisis" is a scam. In other words, it is an attempt by the insurance industry to recoup past losses. Loss recoupment (or excessive pricing) theories make little economic sense. Past gains or losses are irrelevant to setting prices today which will maximize profits tomorrow. Even if some insurance companies were charging excessive premiums, the dynamics of the marketplace would soon drive them out of business. The commercial lines of insurance under which insurance municipalities fall are relatively competitive. "They demonstrate an atomistic market structure with over 900 companies competing. Easy entry and price competition appear to be the results of such a market structure."⁸ Even if excessive premiums were being charged by some insurers to recoup losses, other insurers would offer the same coverage at lower prices reflecting the actual risk. It is difficult to conceive how premiums would be kept at artificially high levels in an atmosphere where price is competitively determined.

The loss recoupment theory may be without economic merit. The insurance industry's role in the liability crisis developed as follows: A few years ago, while interest rates were around 20 percent, the insurance companies began the practice of "cash-flow underwriting."

Actions to Reduce Losses

In search for premium dollars, municipality insurance policies were underpriced by the insurance companies for the risks involved. When interest rates fell, insurance companies were left with an inventory of underpriced policies and insufficient investment income to subsidize claim losses. At the same time, the reinsurance market curtailed its reinsurance treaties.

The insurance industry has taken numerous steps to reduce its losses. The six major steps taken are:⁹

1. Cancellation of major exposure clients
2. Restriction of new business
3. Reduction of coverages
4. Increase in premiums
5. Curtailment of underwriting high-risk business
6. Selective underwriting criteria

Each of these steps is discussed as follows:

1. Cancellation of Major Exposure Clients.

Nationwide, a number of insurers have stopped writing municipal liability insurance coverage.^{*} Some of the major firms are: Aetna Casualty and Surety, Home Indemnity, INA/CIGNA, and St. Paul.

2. Restriction of New Business

Large municipal liability carriers leaving the market have reduced the availability of liability insurance for municipalities to next to nothing.

3. Reduction of Coverages

The Insurance Services Office (ISO) has developed a new comprehensive general liability policy (C.G.L.) under which municipality coverage would fall.

The new C.G.L. policy introduces "claims-made" coverage. If coverage changes to claims-made rather than occurrence coverage, then incidents that were previously insured because they occurred during the policy period will often be uninsured unless a claim has actually been made against the insured during the coverage period. Hence the name, claims-made coverage.

The new C.G.L. form will also contain an extended reporting period restriction. Claims made more than sixty days after the policy expiration will not be covered unless the insured purchases a five-year extended reporting period. The additional cost is approximately 200 percent of the cost of the premium for the prior policy year. This will greatly reduce the option and flexibility of moving a policy from one carrier to another.

4. Increase in Premiums

Premiums have increased dramatically.

5. Curtailment of Underwriting High-Risk Business

With a limited capacity to write insurance, insurance companies are writing low-risk policies first and high-risk policies are not being written.

6. Selective Underwriting Criteria

Careful underwriting is a standard insurance practice. However, when capacity is constricted as in this current crisis, underwriting becomes very tight. Various municipality activities are reviewed with a jaundiced eye. Rodeos, statues in the middle of streets and other activities out of the ordinary are not underwritten.¹⁰

The underwriting process is reviewed in more detail in Chapter 4 of this paper.

NOTES

1. Tom L. Lewis, "President's Message," Trial Trends (Montana Trial Lawyers Association, Fall 86), p. 2.
2. U.S. Department of Justice, Office of Attorney General, Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in Insurance Availability and Affordability. by Richard K. Willard and Robert Z. Willmore (Washington, D.C.: Government Printing Office), 1986, p. 22.
3. Ibid., p. 17.
4. National Conference of State Legislatures, Controlling Liability Insurance Costs: State Initiatives in the Area of Insurance Regulation, by Brenda Trolin (May, 1986), p. 1.
5. USF&G Insurance Company, A Glossary of Selected Insurance Suretyship and Legal Terms (Baltimore: Education and Planning Department, 1974), p. 73.
6. Ibid., p. 60.
7. David J. Labrec, "The Municipal Liability Insurance Crisis," The Municipal Attorney, 27 (May-June 1986): 15.
8. U.S. Justice, Office of Attorney General, Report of the Tort Policy, 1986.
9. Labrec, "Municipal Liability Insurance Crisis," p. 16.
10. Ibid.

CHAPTER III

THE LEGAL ENVIRONMENT

Who is responsible for the liability problem? It would appear the legal environment is the major causal factor. Five major trends that led to the severity of the problem are:

1. The waiver of sovereign immunity
2. The movement toward no-fault (strict) liability
3. Joint and several liability and shifts in traditional burdens of proof
4. The explosive growth in damage awards
5. The excessive transaction costs of the legal system

These five trends are explained as follows:

Waiver of Sovereign Immunity

Sovereign immunity can be defined as "the government's freedom from being sued for damages (money) in all but those situations in which it consents to suit by passing statutes."¹

Sovereign immunity as a legal doctrine was accepted by the Supreme Court of Montana early in Montana's statehood. However, the new state constitution adopted in 1972 abrogated the doctrine in its entirety. Article II, Section 18, of the new constitution provided that government entities had no immunity from suit for injury to a person or property.

The constitution convention transcripts show that the amendment proposing abolition of sovereign immunity reads:

"Section 18, Non-Immunity from Suit: The State and its subdivisions shall have no special immunity from suit. This provision shall apply only to causes of action arising after June 1, 1973."2

This amendment became effective July 1, 1973. However, within one year the legislature presented to the people a constitutional amendment that allowed the legislature to limit the scope of the section's total abolition of immunity. This amendment was adopted and became effective July 1, 1975.

The amended section now reads: "Section 18, State Subject to Suit. The State, counties, cities, towns, and all other local entities shall have no immunity from suit for injury to a person or property, except as may be specifically provided by law by a two-thirds vote of each house of the legislature."3

The 1975 legislature session could not reach agreement over the extent or type of immunity granted.

The legal doctrine of sovereign immunity is a complex issue. However, its importance to this paper is simply this: How do the changes relating to sovereign immunity affect the availability and affordability of municipality liability insurance?

Prior to July 1, 1973, municipalities could purchase insurance, if they desired, and sovereign immunity was waived to the extent of that coverage under general statute 82-4307. Before July 1, 1973, municipalities were desirable accounts from an insurance company standpoint, because the extent of their liability was a known and constant factor. However, with the

changes in sovereign immunity, the general public has brought a variety of lawsuits against municipalities to determine the extent of the new liability exposure for government entities. Insurers do not want to bear the costs of these lawsuits. Remember that insurance is a risk-transfer mechanism. With the changes in sovereign immunity, the risk of insuring municipalities has increased dramatically.

The Movement Toward Strict Liability

"Strict liability in civil law is legal responsibility for damage or injury even if one is not at fault or negligent."⁴

The degree to which the current tort system has turned toward no-fault (strict) liability is disturbing for municipalities. Current tort laws appear to be focusing on societal insurance and risk spreading.

The effect of this new focus is devastating to municipalities. It greatly undermines the importance of fault as the justification for and limitation of tort liability.

Joint and Several Liability

"The legal doctrine of joint and several liability applies when more than one defendant is responsible for causing an injury. If one defendant cannot pay, the burden of payment is transferred to other parties found to be at fault."⁵

A classic example of joint and several liability is the court case, *Sills vs. City of Los Angeles*, C-333504 (San Francisco Superior Court). In 1979, a driver under the influence of drugs

drove through a stop sign and was broadsided by another motorist. A sixteen-year-old passenger in the first driver's car was crippled and sustained brain damage.

In March, 1985, a jury returned a verdict of \$2.16 million against the first driver and the City of Los Angeles. The city was found to be 22 percent liability of the total dollar sum awarded. It had failed to trim bushes partly obstructing the view of the first driver.

William McCormick, CEO of Fireman's Fund Insurance Companies in Novato, California, asserts, "A defendant should be financially responsible only for his own fault in the incident, and not for someone else's fault if the person can't pay." He believes the doctrine of joint and several liability should be abolished.⁶

At least seventeen states have already limited or abolished the doctrine of joint and several liability.

Californians voted to restructure joint and several liability, known as the "deep pocket" initiative. It will require courts to levy damage awards against public agencies and individuals only to the extent that each is held responsible. Chapter IV discusses Montana Senate Bill 51 on joint and several liability in the state of Montana.

Explosive Growth in Damage Awards

"The Wyatt Company, a risk-management consulting firm in Chicago and Washington, D.C., reports a more than 40 percent increase in public entity lawsuits between 1982 and 1985."⁷

However, this may not be representative of the Montana civil justice system.

Here in Montana, according to a recent study by the National Center for State Courts, the number of filings has actually been decreasing over the study period at a rate of 16 percent. In other words, the facts do not support the insurance industry's claim that we have an explosion of litigation on our hands.⁸

Whether the tort explosion is a factor in Montana is debatable. However, it should be noted that insurance companies are concerned with national trends. Just the threat of increased lawsuit activity against municipalities has made insurance companies shun municipalities.

Excessive Transaction Costs

The two major factors that have led to excessive transaction costs are the unpredictability of judicial awards and the size of those awards.

The expansion of municipality liability has led to unpredictability in awards and causes of losses. Municipalities get involved with cases that are difficult to settle and expensive to litigate. Municipality lawsuits often involve social issues.

Suppose that a group of minority citizens sues a municipality, alleging that the municipality deprived them of their civil rights. Many cases involving civil rights issues are expensive to litigate and unpredictable in their outcome. Insurance companies do not want to underwrite the social and political battles municipalities often have to fight.

Nationwide, in 1985, 19,533 cases were filed against state and local agencies under Section 1983 of the Civil Rights Act.

The average settlement against municipalities has risen dramatically. The Wyatt Company reports that in 1982 the largest settlement reported by 1,244 cities surveyed was \$230,000. By 1985, the figure had climbed to \$500,000.⁹

NOTES

1. Lawyer's Dictionary for Non-Lawyers, 2nd ed., s.v., "Sovereign Immunity."
2. Montana Constitution (1972), art. 2, Sec. 18.
3. Ibid.
4. Lawyer's Dictionary, 2nd ed., "Strict Liability."
5. Ibid., "Joint and Several Liability."
6. Nancy Blodgett, "Premium Hikes Stun Municipalities," ABA Journal, The Lawyer's Magazine (July 1986): 48.
7. Ibid.
8. Tom L. Lewis, "President's Message," Trial Trends, Montana Trial Lawyers Association (Fall 1986): 2.
9. Blodgett, "Hikes Stun Municipalities," p. 50.

CHAPTER IV

STATE REGULATORY SYSTEM

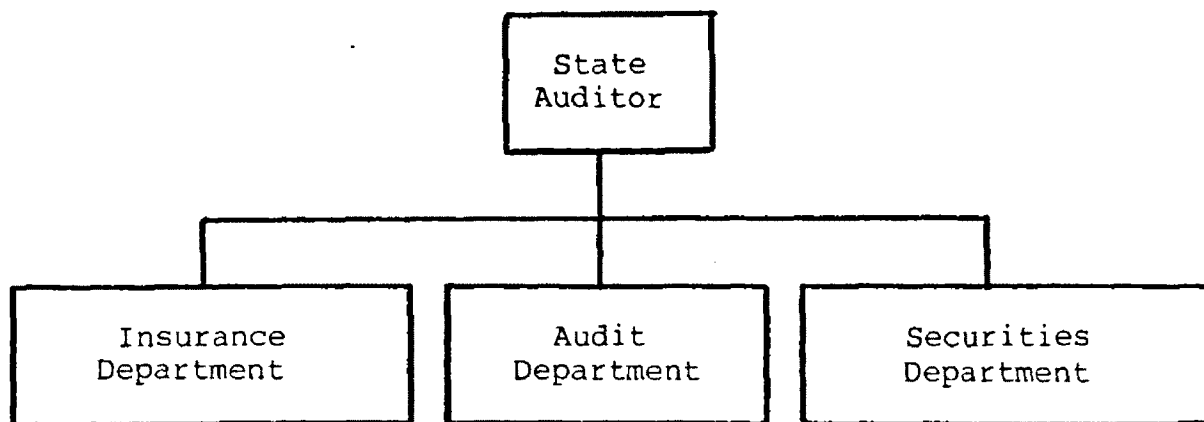
The Department of Insurance is the regulatory agency in Montana overseeing the operation of insurance companies within the state.

Organization of Insurance Department

The position of state auditor, ex officio insurance commissioner, was created by Section 2-15-1903 MCA, effective January 1, 1961. The state auditor is elected by the voters and the term of office is four years. The office of the state auditor consists of the following departments: audit, insurance, and securities.

EXHIBIT 2

ORGANIZATIONAL CHART OF THE OFFICE OF THE STATE AUDITOR



Key personnel within the insurance department are the chief deputy commissioner, an assistant chief deputy, and legal counsel.

The Administrative Rules of Montana explain the function of the insurance Department as:

Insurance department. The insurance department is responsible for providing protection for Montana consumers of insurance. The department authorizes and examines insurers; administers security deposits; collects and distributes premium taxes and other fees; reviews insurance form and rates; examines and licenses agents, solicitors and adjustors; regulates trade practices; and investigates and resolves consumer inquiries and complaints."¹

The Need for Insurance Regulation

The need for insurance regulation is based on the three major characteristics of the insurance industry:

(1) Its size and complexity. It is difficult for consumers to understand the industry operation.

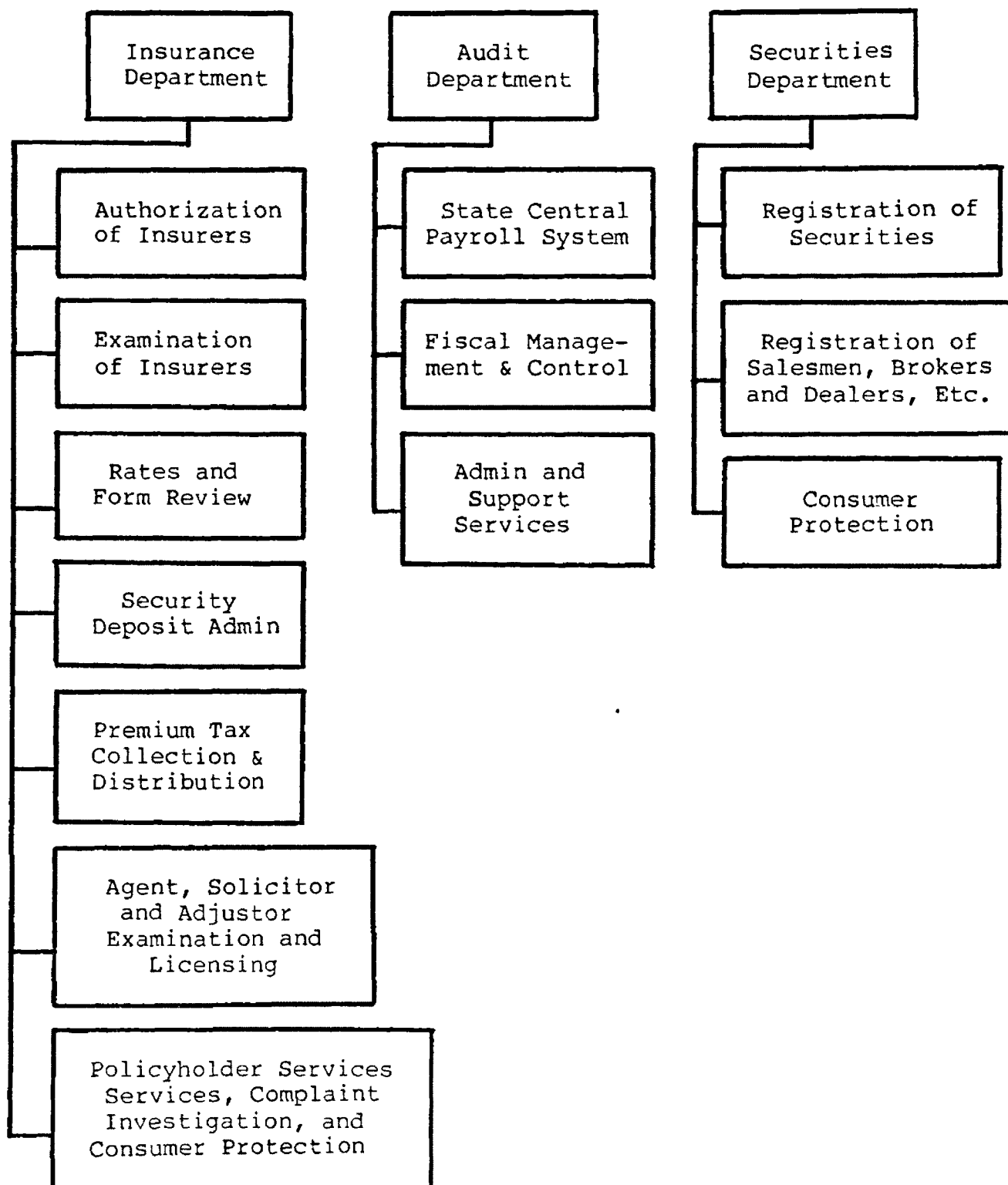
(2) The nature of the insurance contract. Insurance company solvency is a primary goal of regulation. It is necessary for the policy holder to believe in the financial soundness of insurance companies and that these companies be able to pay future claims.

(3) The extent to which the public and private sector rely on insurance to conduct their operations and duties. Regulatory response to the current Montana municipality liability insurance crisis must be designed to protect a municipality from unavailability of markets and excessive pricing.

One way to ensure market availability is to regulate financial soundness. According to the National Association of Insurance Commissioners, it is a function of state insurance

EXHIBIT 3

FUNCTIONAL CHART OF THE INSURANCE DEPARTMENT



departments to ensure insurance company solvency. To carry out this function, state insurance departments engage in a number of activities such as financial examination and trade practice regulations.

Critics maintain that one of the chief causes of financial difficulties of some insurance companies is not the "liability crisis," but that they were undercapitalized when they entered the market in the early 1980s. It is important to ensure financial soundness of insurance companies so that "fly-by-night" companies do not artificially drive down prices and leave the market with short-term profits and plant in their wake the seeds of crisis. The financial soundness test helps to build an insurance marketplace with long-term available markets and provide stability to the industry.

Rate regulation is designed to ensure rates that are adequate, reasonable, and not unfairly discriminatory.

Rating Regulation Methods

Four rating regulation methods are used. They are:

Open Competition is the least restrictive form of rate regulation, rates are not filed with the insurance department. Open competition is feasible for large states because the large volume of premiums keeps rates competitive.

File and Use requires rates to be filed with the insurance department. The commissioners can review the rates to determine if they are inadequate, excessive or discriminatory.

Prior Approval requires companies to file their rates and to obtain approval from the commissioner before these rates can be implemented.

Flex-Rating insurers writing selected commercial lines of insurance are allowed to deviate rates within an established percentage without obtaining prior approval from the commissioner. The commissioner determines the lines on insurance, base rates and percentages allowed in the plan.

Montana has adopted "file and use statutes." Montana allows thirty to sixty days for the insurance department to reject the new rate. The department has never rejected a rate in its recent history.

While cash-flow underwriting was occurring, the Montana Department of Insurance did nothing to stop its practice. The insurance department should not only be a watchdog over excessive rates, but it should provide industry leadership and support of stable adequate pricing rates rather than temporary market savings and short-lived competition.

In order to provide effective regulation, staff actuaries are needed. An actuary analyzes cost of coverage through assessment of the probability of losses. Actuaries can help determine rates which would be fair and still provide reasonable profits for insurance companies.

At present, the Montana Department of Insurance does not employ an actuary.

Cancellation and Non-Renewal Rules

One positive step taken by the Montana Insurance Department is its rules regarding cancellations and non-renewals. Montana insurance companies now must attach an Amendatory Endorsement to all policies to comply with Department of Insurance rulings. These rules help provide a stable insurance market for Montana consumers. The endorsement is described below.

To illustrate Rule A, assume a county's liability coverage is written by an insurance company that did not write this coverage the year before. Under Rule A of the endorsement, the company has only sixty days to reject the coverage. This provision eliminates the serious problem of midterm cancellations by insurance companies. It basically provides the insurance companies with only a sixty-day discovery period to inspect the municipality. A municipality can have coverage for the full policy term after sixty days pass.

However, Rule A includes seven reasons an insurance company might be able to forego the risk after sixty days. With the exception of failure to pay a premium when due, these reasons are hard to prove and it would be difficult to cancel coverage of a municipality using one of them as justification.

Rule B is applicable when the company has written the county's liability cover for the past policy year. However, when the policy comes up for renewal and the insurance company decides not to write the liability coverage for the coming year, this is

AMENDATORY ENDORSEMENT
(MONTANA)

- A. With respect to provisions for cancellation by the company, the following is added to the Cancellation Condition:

1. CANCELLATION OF POLICIES IN EFFECT FOR 60 DAYS OR MORE

If this policy has been in effect for 60 days or more, this policy may be cancelled by the company prior to the expiration of the agreed term or one year from the effective date of the policy or renewal, whichever is less, only for one or more of the following reasons:

- a. Failure to pay a premium when due;
- b. Material misrepresentations;
- c. Substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract;
- d. Substantial breaches of contractual duties, conditions or warranties;
- e. Determination by the Commissioner of Insurance that continuation of the policy would place the insurer in violation of the Montana Insurance Code;
- f. Financial impairment of the insurer; or
- g. Such other reasons that are approved by the Commissioner of Insurance.

If this policy is cancelled by the company based on the above provisions, the company will mail or deliver a written notice to the named insured at least 10 days before the effective date of cancellation.

AMENDATORY ENDORSEMENT (Continued)

2. CANCELLATION OF POLICIES WITH A TERM OF MORE THAN ONE YEAR:

In addition to the right of this company to cancel as provided in paragraph one, this company may cancel any policy with a term of more than one year by mailing or delivering to the named insured, not less than thirty days prior to any anniversary date of this policy written notice stating that cancellation shall be effective on the anniversary date of the policy.

B. The following is added as a new condition:

1. Nonrenewal

If the company elects not to renew this policy, it will mail or deliver to the named insured and agent, if any, a notice of intention not to renew at least 30 days before the agreed expiration date.

2. This company need not mail or deliver this notice if:

- a. The named insured has purchased insurance elsewhere;
- b. The named insured has accepted replacement coverage;
- c. The named insured has requested or agreed to nonrenewal; or
- d. This policy is expressly designated as nonrenewable.

an example of non-renewal and it is covered under Rule B of the endorsement.

Rule B states the insurer must deliver notice to the insured party and agent, if any, that the insurer does not intend to renew the coverage. Such notice must be given at least thirty days in advance of the expiration date of the policy. This thirty-day advance notice gives the municipality time to find another insurer. This ruling which became effective in July, 1985, helps to solve the unavailability of markets problem by mandating coverage stability in the marketplace. Another tool used by the Department of Insurance was the development of the Market Assistance Plan.

Market Assistance Program

In response to the current liability crisis, the Montana Department of Insurance was authorized by House Bill 16 to establish a Market Assistance Plan (MAP). The plan became effective June 3, 1986, to assist consumers in locating commercial liability insurance for political subdivision, day care centers, day care homes, and liquor liability. This paper will only address the issue of how MAP has helped Montana municipalities with over 25,000 residents find liability insurance coverage.

MAP is composed of three committees. All three committees are composed of active volunteer members of the Montana insurance industry. They receive no compensation for their assistance. They include the Agents Committee, Underwriters Committee, and Advisory Committee.

The MAP operates on an application basis. The insurance agent representing the municipality must have received declinations from three different insurance sources before the municipality is allowed to submit its application to the MAP. After the application is determined to be eligible, it is forwarded to a member of the Agent's Committee.

This agent searches the marketplace to locate an insurance source. If this agent finds a source of insurance, the process is complete. However, if the agent fails to obtain a quote for the municipality, the Agent's Committee forwards the application to the Underwriters Committee.

The Underwriters Committee submits the application to participating companies in the plan on a rotating basis. Participating companies are expected to quote one out of five risks submitted to them. If the Underwriters Committee cannot find an insurance source for the municipality, the application is forwarded to the Advisory Committee.

The Advisory Committee reviews the activities of the Agents and Underwriters Committees and must approve all letters to any municipalities which state the MAP was unable to obtain a quote for the municipality. The Advisory Committee prepares a monthly status report on all submissions to the plan for the Commissioner of Insurance to review. If the Commissioner believes an application should be resubmitted, the Commissioner notifies the Advisory Committee and the search for liability coverage begins anew. See Exhibit 4 for MAP process activities and steps of action.

EXHIBIT 4

MARKET ASSISTANCE PROGRAM PROCESS ACTIVITIES

Process ActivitiesProcess Steps

Municipality determines insurance needs. Submits applications.

Step 1: Submit application to three or more liability insurance sources.

If quote is obtained, and if quote is not obtained, continue

Determine if municipality meets criteria search for insurance market

Step 2: Submit application to MAP

If not eligible--end
If eligible--continue

Step 3: Application forwarded to Agents Committee

If quote is obtained--end
If quote not obtained--continue

Submit application to participating companies

Step 4: Application forwarded to Underwriters Committee

If quote is obtained--end
If quote not obtained--continue

Application reviewed. Reasons for insurance unavailability outlined to Insurance Department

Step 5: Application forwarded to Advisory Committee

Insurance Commissioner reviews application and may choose to resubmit application

Step 6: Application forwarded to Insurance Commissioner

A publication was prepared by the MAP program to answer the public's most frequent questions about the plan. See Appendix 1. A list of all the companies that have agreed to participate in the MAP plan by writing political subdivision (municipality) liability coverage is found in Appendix 2. Three municipalities with over 25,000 residents have been submitted to MAP. They are Missoula, Lewis and Clark, and Flathead.

Summary

In summary, the Montana Insurance Department has taken two very important actions to alleviate the municipality liability insurance crisis: First it has established rulings regarding cancellations and nonrenewals. These rulings provide for a more stable insurance market. Second, it has the Market Assistance Plan. Even though only two of the twelve target municipalities have made full use of this plan, it is available for others as a potential market.

The Montana Insurance Department has addressed the issue of availability with some success. However, the critical issue of affordability has been left untouched.

The MAP program has a very serious limitation. It does not address the critical issue of affordability. MAP has successfully solved the availability problem for only a few municipalities. MAP may locate a source of insurance, but it is at a take-it-or-leave-it price. The MAP program has had a very limited impact on the crisis. Rate regulation is currently nonexistent in Montana.

NOTES

1. Administrative Rules of Montana, p. 9:18.

CHAPTER V

THE UNDERWRITING PROCESS

This chapter will try to explain the necessary underwriting process required to successfully underwrite liability coverage for a Montana municipality with over 25,000 residents.

Underwriting can be defined as the responsibility of determining the acceptability of risks, in what amounts, and at what price. The acceptability of a risk basically hinges on this question, "Can the insurer make a reasonable profit by insuring this risk?" To determine an answer to this question, underwriters carefully examine the characteristics of a risk and the exposures to loss they represent.

Best's Underwriting Guide

One of the tools underwriters use in their decision-making process is Best's Underwriting Guide. See Exhibit 5. This guide highlights the characteristics of an individual risk classification, for example, municipal governments, and explain the risks involved in writing such a risk.

General liability is given a rating of 10 which indicates that municipal governments have the highest possible exposure to loss as judged by this index. Some examples of other risk classifications that the Best Underwriting Guide rates for general

EXHIBIT 5

BEST'S HAZARD INDEX FOR MUNICIPAL GOVERNMENTS

PER LINE OF INSURANCE

<u>Line</u>	<u>Best's Hazard Index</u>	<u>Underwriting Comments</u>
Automobile Liability	9	Depends on number of emergency vehicles
Automobile Physical Damage	8	
General Liability	10	Depends on management, scope of operations
Product Liability - Completed Operations	6	
Public Officials Liability	10	Lower without police coverage or zoning problems
Environmental Impairment Liability	10	Lower without landfills or sewage treatment
Workers' Compensation	8	
Crime	4	Higher without adequate internal control
Fire & E.C.	6	Higher for older buildings
Business Interruption	6	Higher if emergency planning is inadequate
Inland Marine	5	Higher with extensive contractor's equipment

SOURCE: A. M. Best Company, Inc., Underwriting Guide, January 1986, p. 7.

NOTE: Low, 1-3; Medium, 4-6; High, 7-9; Very high, 10.

liability are:

Marinas = 7	Pest Control Operators = 6
Surface Coal Mining = 7	Employment Agencies = 3
Mobile Home Park = 6	Oil or Gas Well Drilling = 7
Pesticide Manufacturing = 7	Podiatrist's Office = 4

Thus, it seems evident underwriters might be hesitant to write liability coverage for municipalities, and when they do write it, they demand higher premiums. Municipalities have a wider variety of exposures than do other commercial liability classes.

Best's Underwriting Guide is based on common general exposures and nationwide experience.

It is important for underwriters to take a look at the "big" picture through the Best's Underwriting Guide. It is equally important for underwriters to narrow their focus on the individual risk they are trying to write.

The Underwriting Process

Underwriting is a process of investigation. The following is a list of questions prepared to help narrow the focus. Every underwriter should ask these questions when underwriting a Montana municipality with over 25,000 residents.

Question #1.--What does the insured's loss history reveal? Underwriters review loss histories with two questions in mind. Is there a frequency problem? Is there a severity problem? A frequency problem exists when a municipality has a lot of small

claims. This problem can be solved from an insurance standpoint by use of a high deductible. However, if the frequency problem is too great, it indicates carelessness and a lack of concern for safety on the part of the insured. Lack of concern on the part of a municipality is an unsolvable underwriting problem and that alone should cause the underwriter to decline coverage.

Severity exists when a risk has had one or two big losses. Many times, these losses were unavoidable. Insurance is designed to cover these kinds of losses, therefore, an underwriter could write a municipality with a severity problem if he or she believes that the municipality is doing all it can to protect itself from these types of losses in the future.

Question #2.--Is the insured committed to an effective loss control program? Even if a municipality has an acceptable loss history, what is to prevent future losses if it does not have a loss control program? A Montana municipality must have good control of its building and road maintenance programs. Every Montana municipality should have someone assigned to the position of risk manager.

A risk manager should have the authority to oversee the loss control measures of each department and work closely with the insurer to comply with any recommendations generated after an insurance inspection. Very few Montana municipalities have risk managers, and, unfortunately, loss control does not get the attention it deserves. An underwriter knowing this may decline a municipality upon review of prior inspection simply because the

chances of the recommendations being complied with are slim to none. Whereas, if the municipality had a loss control program established, the underwriter might feel more willing to work with the municipality because the chances of the recommendations being complied with are greater.

Question #3.--What is the current financial condition of the municipality? Does the municipality have enough money to maintain its buildings and roads? Does the municipality have enough money to hire and retain skilled workers? Is the municipality planning layoffs in the near future because of a budget problem? All these questions are important when evaluating the stability and loss potential of a Montana municipality. A financially sound municipality is a far better risk than a municipality that has to cut costs to meet an inadequate budget.

Question #4.--What contractual liabilities has the municipality assumed? Every municipality should require certificates of insurance from contractors and any party wanting to use a municipal facility such as a fairgrounds. Every certificate should include a hold harmless clause which basically states that the municipality will be held harmless for any injury or damages arising out of that party's activities.

For example, a bridge collapses while under construction in Great Falls and injures three people. A hold harmless agreement states the bridge builder, not the city, is liable.

Hold harmless agreements greatly reduce the number of lawsuits and claims a city might be drawn into. If an underwriter determines a municipality is lackadaisical about this exposure and does not require certificates of insurance, liability insurance could be declined for that reason alone.

Question #5.--Are all steps in the hiring process documented? Are all employees who are being dismissed given due process? Montana municipalities with over 25,000 residents are major employers in a community. Unless the hiring and dismissal process is handled correctly, the municipality is opening itself up to civil rights suits based on discrimination and wrongful termination claims.

Question #6.--Is coverage provided for a police department, fire department, landfill or other specialized risk? Standard insurance company policies do not provide coverage for police department or fire department liability. The general liability underwriter must verify that these coverages are provided by another insurance source. If a department does not have coverage and is involved in a claim, a court might seek recovery from the general liability carrier.

Question #7.--What uniquely hazardous conditions are presented by the insured's roads, sidewalks, buildings, parks and playgrounds? For example, is there a protective railing around Giant Springs in Great Falls or could a child simply fall in and drown? Are the streets so poorly maintained in Helena that they

contribute to an abnormal amount of traffic accidents? Is the sidewalk about the Yellowstone County Courthouse so poorly maintained that an elderly taxpayer could fall and break a hip?

The list of seven questions is not complete; however, by receiving answers to these seven questions, underwriters following the Best Underwriting Guidelines should be able to make informed underwriting decisions and price municipalities according to the risks involved.

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CHAPTER VI

MONTANA TORT REFORM

This section of the paper addresses how current Montana tort reform has tried to help alleviate the liability crisis for Montana municipalities.

A tort is a civil wrong between persons. Tort reform describes the process of trying to bring the civil justice system back on "center." Supporters of tort reform believe the civil justice system has tilted too far toward the injured party. Montana tort reform can help alleviate the Montana liability crisis by helping to establish predictability and stability in the Montana municipality liability insurance marketplace and the Montana legal environment.

The Montana municipality liability crisis had its start in 1972 when the new State Constitution abolished the doctrine of sovereign immunity. State and local governments, for the first time, were subject to suits the same as the private sector. However, the new constitution did allow that by a popular vote of the people the legislature could establish limits of liability for governmental entities.

Brief History of Montana Tort Reform

In 1974 elections, the people by a popular vote directed the Montana legislature to establish limits of liability for govern-

mental entities. In 1975 the legislature established limits of \$300,000 per person and \$1,000,000 per occurrence.

However, in 1983 the Montana Supreme Court struck down these limits in the White Decision. This decision came down during a legislature session, so the legislature hurriedly drafted a bill to reestablish these limits. The legislature thought they were following the guidelines sent down by the Supreme Court to make limits of liability constitutional and the bill passed.

However, on December 31, 1985, the Montana Supreme Court again struck down the limits of liability with the Pfost Decision, stating equal protection under the law and full legal redress had been violated.

In March, 1986, during a special session, the legislature tried to pass a referendum to put on the ballot. This referendum was designed to clearly place in the State Constitution the right of the legislature to establish rights and remedies and limits of liability. The referendum required a two-thirds major vote of the legislature which the referendum was unable to obtain.

It was after this referendum failure that the Montana Liability Coalition was formed. The coalition began the initiative to place I-30 on the ballot. The petition to place Constitutional Amendment No. 30 on the election ballot explained I-30:

This initiative would amend the Montana Constitution to authorize the legislature to determine the rights and remedies for injury or damage to person, property, or character. Currently the Constitution does not permit limits on damages for economic loss resulting from bodily injury.

Although I-30 passed public vote, it was overturned by the Supreme Court of Montana because of clerical errors and the failure to print the entire initiative for the public. If the decision is not overturned and no special election is held, the coalition will probably begin another initiative process.

With or without I-30, the 1987 legislature passed many tort reform bills that will have an impact on the Montana municipality liability crisis. These bills stand as law until they are tested by the Montana Supreme Court, at which time they may or may not be overturned. I-30 would have only lessened this risk of court overturn.

SB 51 Joint and Several Liability

This bill revises the law relating to joint and several liability and became law July 1, 1987. It provides that the negligence of a plaintiff is compared against the combined negligence of all persons. The plaintiff's recovery is not barred unless his negligence is greater than the combined negligence of all persons against whom recovery is sought.¹ The bill provides that any party whose negligence is 50 percent or less of the combined negligence of all persons is severally liable only and is responsible for only the amount of negligence attributable to him.

To illustrate the benefit of this law to Montana municipalities, let us examine the following fictitious auto accident case.

An auto collision occurs between two cars in the middle of a Great Falls intersection. Damages to be awarded in this case

total \$100,000. The driver of Car A (Plaintiff) is rear-ended by the driver of Car B (Defendant 1). The City of Great Falls is named (Defendant 2) because it failed to sand the street after a light snow.

After a court case, the plaintiff is found to be 20 percent liable because 100 percent of his left tail light was covered with snow obstructing it from the view of Car B. The driver of Car B (D1) is found to be 60 percent liable because he was traveling at an excessive speed of 70 miles per hour. The City (D2) is found to be 20 percent liable because it failed to sand the street.

Prior to SB 51 the damages probably would have been allocated as follows:

Total damages	\$100,000
Plaintiff's percentage of negligence	\$ <u>20,000</u>
Total Payout	\$ 80,000

Car B is 60 percent liable, but is found to be judgment proof due to lack of funds. The City (D2) is only 20 percent liable, but will probably pay the entire \$80,000 to the plaintiff because it has a "deep pocket" revenue base.

Now, consider the same case after passage of SB 51:

Total damages awarded	\$100,000
Plaintiff's percentage of negligence	\$ <u>20,000</u>
Total Payout	\$ 80,000

Car B (D1) is 60 percent liable and would be \$48,000. But, he is

judgment proof and instead will pay nothing. City (D2), 20 percent liable, pays \$16,000.

This bill eliminates the lawyer's search for a municipality's deep pocket and perhaps will cut down on the number of cases municipalities are drawn into on the remote chance they will be found slightly liable and end up being forced to pay entire damage awards.

HB 567 Collateral Source Payments

This bill provides for the reduction of jury awards by the trial court for amounts paid or payable from collateral source.

Where total awards exceed \$50,000 for bodily harm or death, the trial judge in a separate, post trial hearing where a plaintiff will be fully compensated for his damages (exclusive of court costs and attorneys' fees), the plaintiff's recovery must be reduced by any amount paid or payable from a collateral source that does not have a subrogation right.²

The jury, however, must determine its award without consideration of any collateral sources. This statute applies only to claims arising after the effective date of October 1, 1987.

Consider the fictitious auto accident and the effect both HB 567 and SB 51 will have on damages will be allocated.

Total damage award	\$100,000
Plaintiff's percentage of negligence	\$ <u>20,000</u>
Total payout	\$ 80,000
Payment from collateral source (C1)	
Medical insurance pd \$30,000 in medical bills	\$ <u>-30,000</u>
Payment from collateral source (C2)	

Auto insurance, total auto repair repair bill paid	\$-20,000
	\$ 30,000
Car B (D1), 60 percent liable but judgment proof pays nothing	<u>0</u>
	\$ 30,000

The City of Great Falls (D2) is found 20 percent liable and pays \$6,000 versus the \$16,000 the city would have paid prior to HB 567 and compared to \$80,000 prior to both SB 51 and HB 567.

HB 241 Wrongful Discharge

This bill defines the rights and remedies where termination of an employee is at issue. It defines discharge from employment wrongful only if:

(1) it was in retaliation for an employee's refusal to violate public policy or for reporting a violation of public policy, (2) the discharge was not for 'good cause' and the employee had completed the probationary period of employment, or (3) the employer violated the express provisions of its own written personnel policy. Good cause is defined as 'reasonable, job related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation or other legitimate business reason.'

Damages are limited to lost wages and fringe benefits for a period of four years from date of discharge plus interest.

This bill is important to Montana municipality liability crisis because municipalities are significant employers in Montana communities. It establishes a standard of conduct in statutes. This bill should lower the number of wrongful termination claims made against municipalities.

HB 442 Punitive Damages

This bill provides that the defendant must be found guilty of actual fraud or actual malice before punitive damages may be awarded. The bill also provides that insurance coverage does not extend to punitive damage unless expressly included in the insurance contract.

This bill is important for municipalities because it greatly narrows the scope of punitive damage awards and it also allows insurance companies to exclude punitive damage coverage if they wish. By reducing the exposure to punitive damage awards, it will have a long-term positive effect on insurance availability and affordability.

SB 48 Periodic Payment of Judgments

This bill grants the District Court judge the discretion to order periodic payment of future damages in excess of \$100,000. The bill allows the purchase of an annuity to satisfy payment of these damages. By purchasing an annuity, insurance companies had fixed their payment cost leading to more stability in the insurance marketplace. However, this bill will have only a limited impact because a small percentage of claims reach \$100,000.

SB 249 Governmental Liability Limits

The bill continues the limitation on governmental liability for damages in tort set in the June, 1986, special session.

Limits on claims against the state and local governmental entities are \$750,000 per person and \$1,500,000 per occurrence.

Insurance companies already set limits of liability under which they will respond in their insurance policies, so this bill offers very little new help to insurance companies. However, this bill greatly helps municipalities because it sets a cap on the amount of damages for which they can be held liable.

Municipalities can purchase insurance policies with \$750,000 per person and \$1,500,000 per occurrence limits and feel secure that they have purchased adequate insurance unless the Supreme Court overturns this bill at some future date.

Conclusion

Before Montana tort reform can have an impact on the liability crisis it must stand the test of time and the decisions of the Montana Supreme Court.

Insurance companies will wait to determine if these laws really reduce their exposure to losses and costs. If they do, municipality liability insurance should become more available and affordable.

NOTES

1. Montana, Petition to Place Constitutional Amendment No. 30 on the Election Ballot, 1986.
2. Highlights of Legislation Enacted by the 1987 Montana Legislature, Joseph Mazurek, p. 7.

CHAPTER VII

MONTANA MUNICIPALITY INSURANCE AUTHORITY

Municipality managers realized when their liability coverage was cancelled or their premium skyrocketed that the municipalities of the state of Montana were in the midst of a nationwide liability crisis. Many city managers approached the Montana League of Cities and Towns for assistance regarding the lack of availability and affordability of municipality liability insurance coverage. In March, 1986, the League of Cities Board responded to this crisis by establishing a corporation entitled Montana Municipality Insurance Authority.

Membership Requirements

The membership requirements for the Insurance Authority are as follows:

1. The town or city must be located in the state of Montana. Counties are not eligible for membership. However, city and county governments that have been recently consolidated are eligible. For example, Butte-Silver Bow is a member.
2. The municipality must belong to the Montana League of Cities and Towns.
3. The municipality must indicate an interest in belonging to the Insurance Trust.
4. The municipality must complete a formal application.

A copy of the liability coverage application used by the Montana League of Cities and Towns is found in Appendix III.

Experience of the Trust

Over one hundred cities and towns belong to the Trust. All of the target cities of this study, those with over 25,000 residents, belong to the trust.

No city or town can be denied membership in the Trust based on its past loss history. However, pricing is based on the exposure to claims of the municipality and its loss history. A municipality with a poor loss history will pay a higher premium than a municipality with fewer losses.

Affordability is achieved by the careful administration of basic inherent advantages of a specialized risk pool over an insurance company. These advantages are:

1. Pricing is not based on nationwide rate levels like insurance company pricing. Pricing is tailored for each individual municipality.

2. The Trust has more flexibility in the use of deductibles. Deductibles per claim are available from \$500 to \$25,000. If a municipality chooses a higher deductible, its premium is adjusted lower.

3. Claim expertise keeps costs down. The Trust's claim adjuster is a specialist in handling municipality liability claims, whereas an insurance company adjuster is a generalist and must handle all lines of insurance.

The expertise of the Trust has been excellent, total claims paid as of March, 1987, were \$147,737 while total premiums received were about \$1,500,000. The Trust's "profit" is derived from the differential in premiums received less claims paid, claim expenses, and administrative expenses. The profit is invested in the Trust's investment portfolio. The Trust's investment portfolio also consists of reinvested bond revenue. It was necessary for the League to establish the sale of bonds so that a necessary reserve could be established to protect the Trust and the member municipalities from any catastrophic loss occurring during the operation of the Trust. As of March, 1987, the Trust has an investment portfolio of over \$6,000,000. The portfolio adequately insures the Trust's solvency at that period. However, because the Trust has only been in existence since March, 1986, there is little credibility to its loss history. The future of this program rests on its ability to control catastrophic losses.

Unlike insurance companies, the Trust does not conduct safety inspections or loss control reports for the municipalities.

The trust's claim adjuster reviews a municipality's claim history and recommends corrective actions for areas where claim frequency is noticed. For example, if a number of claims resulted from people slipping and falling down the steps at a municipality's courthouse, the Trust would recommend necessary changes be made regarding the steps. Because direct communication exists between the municipality and the Trust and because the sense of belonging is greater for the municipality in this type of

insurance program over that of a conventional insurance company, loss control recommendations are followed with greater care and diligence.

The Trust plans safety seminars in the future. Whether or not the Trust's approach to loss control is superior to that of an insurance company remains to be determined. It is an area that is recommended for future study.

The following exhibits, 6 and 7, highlight the number of claims filed per area of exposure by all the cities in the Trust and the number of claims per municipality.

It would appear the Trust could substantially reduce its loss ratio by two actions. First, concentrate its loss prevention efforts on just four department exposure areas: street, sewer, garbage pickup, and water. Second, concentrate its efforts to develop effective loss control programs in five cities, namely, Billings, Great Falls, Helena, Butte, and Missoula.

A transcript of a May, 1987, interview with Mr. Bob King, Claims Adjuster for the Montana Municipal Insurance Authority, is found in Appendix VI.

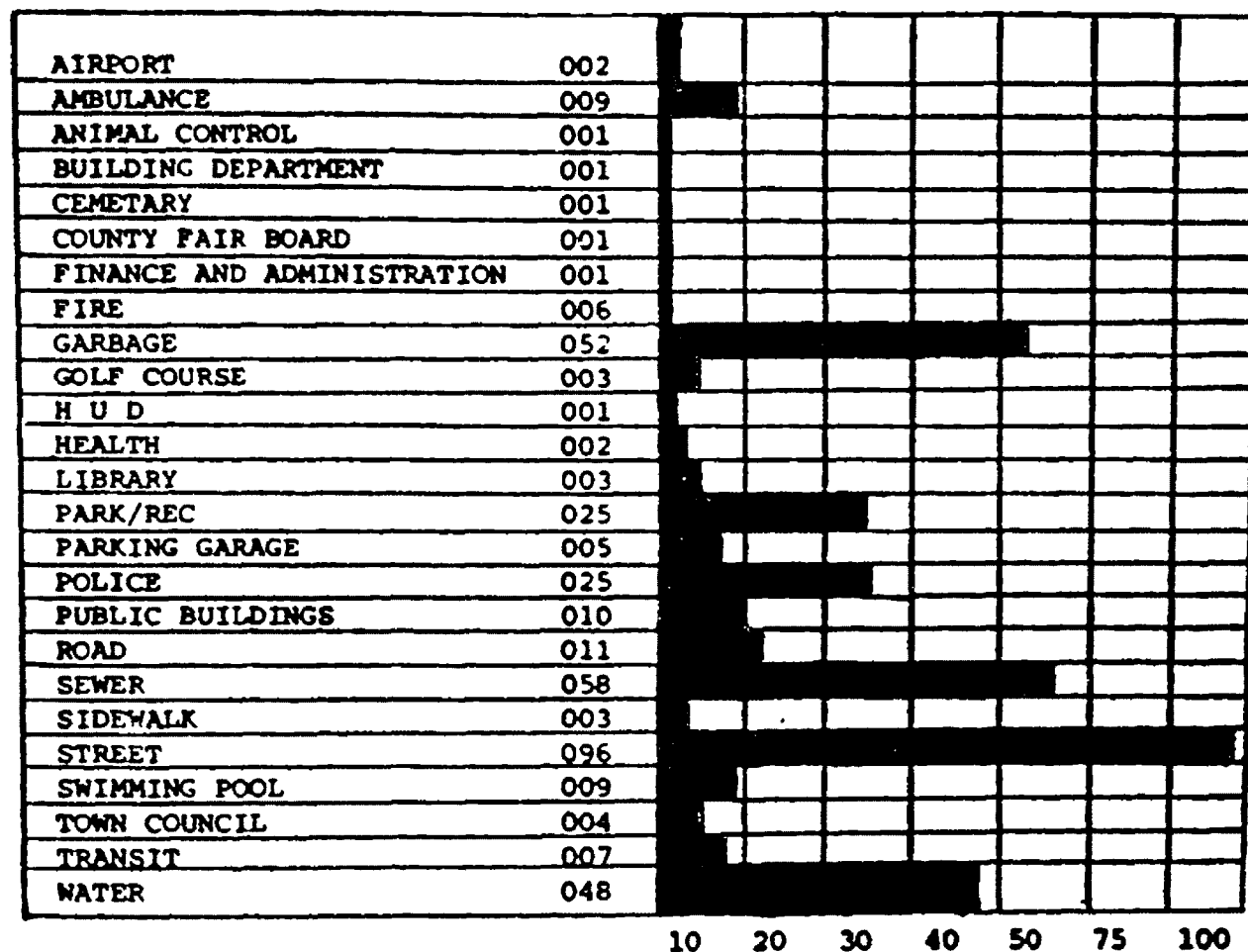
It is recommended that an analysis of the experience of the trust be performed at the end of five years of operation. The insurance industry uses the five year benchmark to establish credibility of a loss record and insurance program.

Summary

A Montana Municipal Insurance Authority is a viable partial solution to the liability crisis for Montana cities. It addresses

EXHIBIT 6

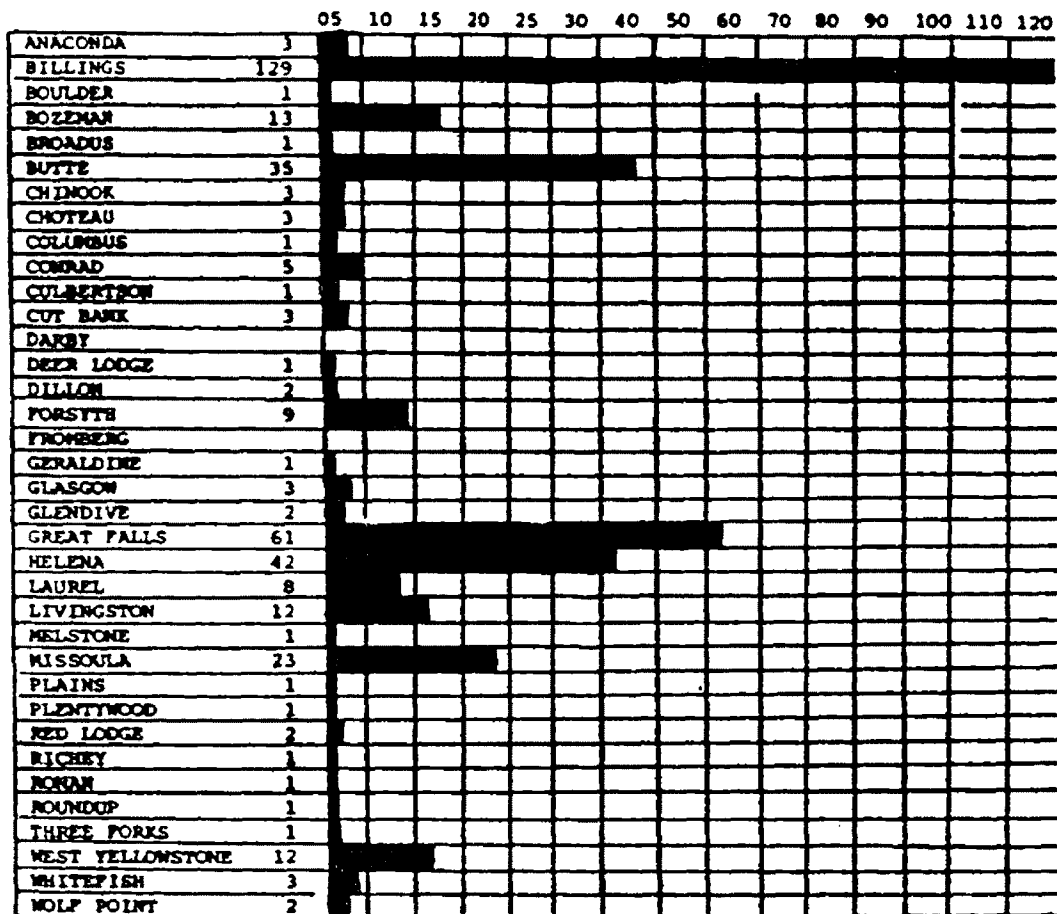
NUMBER OF CLAIMS PER EXPOSURE AREA, MONTANA MUNICIPALITY AUTHORITY, MARCH 1, 1986 - JUNE 5, 1987



SOURCE: Bob King, Claims Adjuster for Municipality Insurance Authority (July 1, 1987).

EXHIBIT 7

TOTAL CLAIMS PER CITY, MONTANA MUNICIPALITY AUTHORITY, MARCH 1, 1986 - JUNE 5, 1987



SOURCE: Bob King, Claims Adjuster for Municipality Insurance Authority (July 1, 1987).

issues of availability and affordability. It also provides broader liability coverage than do standard insurance companies.

However, the Authority has only been in existence since March 1, 1986. That is not enough time to develop a credible loss history. Two or three catastrophic losses (over \$1 million each) in one year would greatly weaken the financial base of this program.

The future success of this program rests on three important factors: effective loss prevention, diligent claim adjusting, and secure investment of revenues.

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CHAPTER VIII

MONTANA ASSOCIATION OF COUNTIES JOINT POWERS INSURANCE AUTHORITY

In this section of the paper the risk pool available to Montana Counties will be outlined.

Mission of Penco

The risk pool is available through the Public Entity National Company (PENCO). It is a subsidiary of Corron & Black, a large nationwide insurance brokerage firm. PENCO has had the endorsement of the National Association of Counties for the past five years.

The intent and mission of PENCO in the state of Montana is to put together a risk pool so that Montana counties would not be subject to insurance marketplace fluctuations. Unlike the League of Cities program which only provides liability coverage, this program also provides property and crime coverage.

The starting date for the PENCO risk pool in the state of Montana was October, 1986. As of July, 1987, the pool had a total of seven counties participating, but only one county with over 25,000 residents--Lewis and Clark County--belonged.

The risk pool addressed the issue of availability by making it available to all Montana counties that wish to join.

Pricing

Pricing is set by the insurance companies providing the various coverage parts of the pool. For example, Lloyd's of London prices the first \$500,000 limit in property insurance, the first \$250,000 limit in general liability coverage, and the first \$100,000 limit in crime coverage. National Union prices the Public Officials Errors and Omissions Coverage. CIGNA prices the next \$11 million limit in property coverage over the \$500,000 limit of Lloyd's property coverage. Finally, St. Paul prices the next \$750,000 limit in general liability coverage over the \$250,000 of Lloyd's general liability coverage.

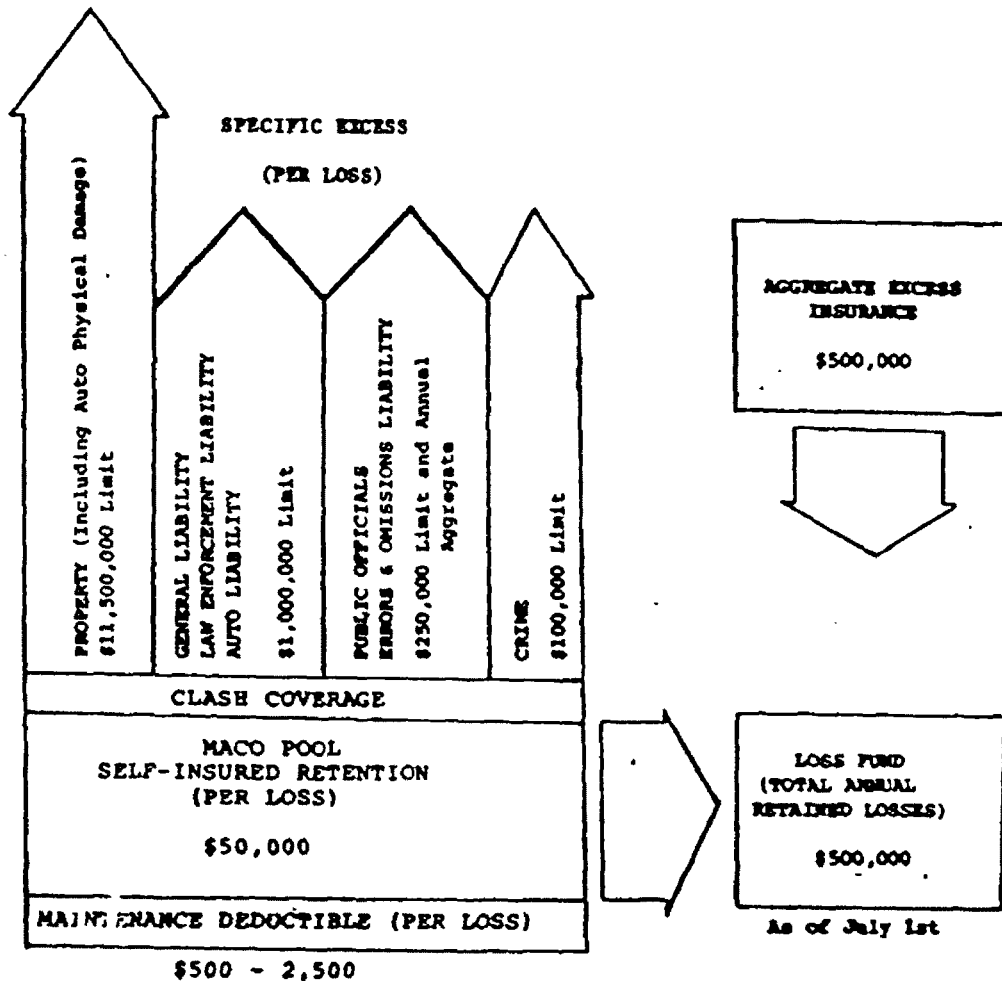
The pricing of this program is not as complex as it appears. Lloyd's of London prepares a quote for the county and the other companies use Lloyd's initial pricing for their quotes. The issue of affordability is a balancing act between the inherent advantages of a risk pool with economics of scale versus the inflexibility of Lloyd's underwriters.

Exhibit 8 below outlines the different layers of insurance available in the risk pool.

The following example illustrates how a county jail fire would be settled by this program. The fire caused \$100,000 in property damage to the jail. Two inmates were awarded \$200,000 each for bodily injury caused by the fire. Total damages were \$500,000.

EXHIBIT 8

MONTANA ASSOCIATION OF COUNTIES JOINT POWERS INSURANCE AUTHORITIES (ALL LINES) (AGGREGATE) (ALTERNATIVE)



SOURCE: Patrice Downey, State Manager of PENCO (July 1, 1987).

First, the county would pay its maintenance deductible based on Exhibit 8 data. The maintenance deductible functions the same as any other insurance deductible, for small losses thereby protecting the stability of the loss fund. The deductible applies to each loss. Each Montana Association of Counties Joint Powers Insurance Authority member county is subject to a maintenance deductible, determined by each county's net operating expenditures. For example:

<u>Expenditures</u>	<u>Deductibles</u>
\$0 - \$1,000,000	\$ 500
\$1,000,001 - \$2,000,000	\$1,000
\$2,000,001 - \$3,000,000	\$2,000
\$3,000,001 - Over	\$2,500

Assume the county being illustrated has a one thousand dollar maintenance deductible.

Second, the next \$50,000 is paid out of the MACO Self-Insured Retention Pool. Every county pays an amount of money determined by Lloyd's of London into this pool. As of July 1, 1987, the pool has a total of approximately \$500,000 reserved. The pool also has a \$500,000 excess policy that would respond if the pool were depleted. The pool is under the management of the Montana Association of Counties.

So far the claim has been settled as follows:

\$500,000	Total Damages
- 1,000	County's Deductible
<u>-50,000</u>	MACO Loss Pool
\$149,000	

Third, the balance of the property damage claim and the first \$250,00 of the general liability bodily injury claim would be paid by Lloyd's of London.

\$500,000	Total Damages
- 1,000	County's Deductible
-50,000	MACO Loss Pool
<u>-300,000</u>	Lloyd's of London
\$149,000	Left to be Settled

Fourth, St. Paul's excel policy over Lloyd's of London pays the remaining \$149,000 of the general liability bodily injury claim.

Final settlement of County Jail fire claim:

\$500,000	Total Damages
- 1,000	County's Deductible
-50,000	MACO Loss Pool
-300,000	Lloyd's of London
<u>-149,000</u>	St. Paul
\$ 0	

The major advantages of the program over a standard insurance company program are: Stability. Prices and coverages are not subject to nationwide marketplace fluctuations. Broader Coverage. The many different layers of coverage parts provide broader coverage with higher limits of liability than would be available from most standard insurance companies. Greater Insured Involvement in Claim Settlement. The Montana Association of Counties (MACO) board is involved in the settlement of any claim

over \$5,000. Many times an insurance company will simply pay a meritless claim because it would cost the company more to fight it. However, in this pool the MACO board decides which \$5,000 and over claims will be paid and which will be fought. This gives the board more control over the pool's loss ratio and increases every county's sense of being in the pool

Comparative Coverages Provided

This section of the paper will outline and compare the different coverages provided by each of the markets available to Montana municipalities for liability insurance.

The available markets are: Standard Insurance Companies such as USF&G and St. Paul; the Montana Municipality Insurance Authority (MMIA), and the Montana Association of Counties Joint Powers Insurance Authority (MACJPIA).

It is important for the reader to realize that price is not the only determinant of the insurance purchase decision. The broadness of the coverages provided also plays a key role.

Listed below are the exposures commonly faced by Montana municipalities and whether or not each is covered by the various insurance programs.

<u>Exposures Faced</u>	<u>Coverage Provided by</u>		
	<u>Standard Co.</u>	<u>MMIA</u>	<u>MACOJPIA</u>
Exposures	No	No	No
Ambulance Service	No	Yes	Yes
Athletic Facilities & Leagues	Yes	Yes	Yes
Auto Parking Facilities	Yes	Yes	Yes
Building Code Inspections	Yes	Yes	?
Bus Operation (fixed routes)	Yes	No	?
Bus Operations (nonfixed routes)	Yes	Yes	Yes
Camps	Yes	No	Yes
Civil Defense	Yes	Yes	Yes

<u>Exposures Faced</u>	<u>Coverage Provided by</u>		
	<u>Standard Co.</u>	<u>MMIA</u>	<u>MACOJPIA</u>
Community Centers	Yes	Yes	Yes
Convalescent Homes	No	No	Yes*
Electric Power Distribution	Yes	No	No
Electric Power Generation	Yes	No	No
Eminent Domain	Yes	No	No
Firework Displays	Yes	Yes	Yes
Fire Departments	Yes*	Yes	Yes*
Garbage Collection	Yes	Yes	Yes
Golf Courses	Yes	Yes	Yes
Hospitals	No	No	No
Housing Projects	Yes	No	?
Jails	Yes	Yes	Yes
Job Placement Services	Yes	Yes	?
Medical Examiners	No	Yes	No
Museums	Yes	Yes	Yes
Parades	Yes	Yes	Yes
Paramedics	No	Yes	Yes
Pest Control	Yes	Yes	Yes
Pipelines	Yes	Yes	?
Police Departments	No	Yes	Yes
Pollution	No	No	No
Public Defenders	No	Yes	Yes
Public Officials Errors & Omissions	No	Yes	Yes
Rehabilitation Centers	Yes*	?	Yes
Road Maintenance	Yes	Yes	Yes
Rodeos	Yes	Yes	Yes
Sanitary Landfills	Yes	Yes	Yes
Sidewalks	Yes	Yes	Yes
Snowplowing	Yes	Yes	Yes
Swimming Pools	Yes	Yes	Yes
Visiting Nurses	Yes	Yes	?
Volunteers	Yes	Yes	?
Waste Treatment	Yes	Yes	Yes
Wrongful Termination	Yes	Yes	Yes

*Excluding professional liability

In any discussion of coverages, it is important to include the limits of liability to be provided and the amount of deductible the municipality will be required to pay. In Flathead County, the following comparisons apply:

<u>Standard Insurance Co.</u>	<u>Limit of Liability</u>	<u>Deductible</u>
General Liability	\$1 million	\$1,000
Public Officials Errors and Omissions	No Coverage Provided	

<u>MMIA</u>	<u>Limit of Liability</u>	<u>Deductible</u>
General Liability	\$500,000	varies
Public Officials Errors and Omissions	500,000	
 <u>MACOJPICA</u>	 <u>Limit of Liability</u>	 <u>Deductible</u>
General Liability	\$1 million	Varies with
Public Officials Errors and Omissions	\$250,000	respect to each county's expenditures

The differing coverages and limits provided by each program make it difficult to endorse one program as being superior to another program. This judgment rests with the actual buyers based on their individual needs and limitations.

Future Impact

Future impact of PENCO rests on two points: More larger counties must join the pool to keep the economies of scale advantage maximized: and, the pool must be price competitive when the nationwide municipality liability market loosens up again.

It is recommended that an analysis of the Montana Association of Counties Joint Power Insurance Authority be conducted after five years of operation. The insurance industry uses the five year benchmark to establish creditability of a loss record and insurance program. The transcript of an interview conducted with Patrice Downey, State Manager of PENCO, can be found in Appendix VII.

Summary

In summary, the question is posed, has the PENCO pool been

successful in helping to alleviate the liability crisis for Montana municipalities with over 25,000 residents?

The pool has had a very limited impact. It helps solve the availability issue by providing a market. Affordability is a question mark. With Lewis and Clark County being the only target study county belonging to the pool, its impact is marginal at best.

Patrice Downey, State Manager of the pool, will only state that the pool to date has been very profitable. However, remember this pool has only been in existence less than a year. We would need a long time frame to judge it profitable or not.

CHAPTER IX

OTHER STATES' ACTIONS IN RESPONSE TO THE LIABILITY CRISIS

It is important that the readers of this study have some insight into what initial actions states other than Montana have taken in response to the liability crisis. More than thirty-five states have enacted some degree of tort reform. Changes in state regulations are widespread.

According to the National Association of Independent Insurers, some 208 bills affecting tort law were enacted in forty-six states in 1985.¹

It would be impossible to examine all these bills and regulatory changes. However, this paper will analyze some major pieces of legislation and regulatory changes enacted by three different states: Florida, New York, and California. Each state brings a unique approach to essentially an identical problem.

Florida

On June 26, 1986, Florida law froze commercial liability rates for six months from July 1, 1986, to December 31, 1986. Florida required insurers to give all commercial liability policyholders a 40 percent premium credit for the quarter-year being October 1, 1986, on policies in effect on May 1, 1986.

The law also requires insurers to file their proposed 1987 commercial rates by October 1, 1986, and prohibits extraordinary cancellations to avoid the special credit or rate freeze. The bill also contains an excess profit test. The legislature also mandated tort reform to include the following:

1. A \$450,000 cap on noneconomic damages.
2. Changed joint and several liability to several liability only for noneconomic damages.
3. Optional structured settlements for future economic damages over \$250,000.
4. Limited punitive damages to three times compensatory damages.

Even before these changes were passed, seven larger insurance companies announced that they would not write any new commercial liability business in Florida. "Twenty-three insurance companies and three national trade associations filed suit asking the Florida state court to declare the new law void."²

Their argument is that the law violates the insurance carrier's right to equal protection under the law and due process as well as violating existing contracts. Under a temporary injunction the court required that a full year of rate refunds be put in escrow, with the rest of the law basically standing as written. Florida appears to be the extreme test for anti-insurance company reform.

New York

The New York insurance reform package was signed by Mario Cuomo on June 25, 1987. The cornerstone of the legislation is

the establishment of flex ratings. Flex rating is a system of rate approval which allows the state department of insurance, after hearings, to establish upper and lower limits within which insurance companies must establish their commercial liability rates.

Another very important element of this law is the requirement that new rates must take into consideration the anticipated savings that result from any tort reform. This mandate directly linking tort reform and insurance rates is a landmark precedent. It is designed to prevent insurance companies from reaping all the monetary benefits for tort reform and leaving insurance consumers in the dark.

This is a very exciting precedent for the insurance industry. It certainly highlights the fact that regulators and consumers have very little faith in the mechanics of the insurance industry marketplace. It sends an important message to insurance companies everywhere. The public wants a clear understanding of rate levels and rate jurisdiction.

California

California voters passed Proposition 51 and made beginning steps toward tort reform. The tort reforms of the Proposition are as follows:

1. Restrict joint and several liability to economic damages only.
2. Eliminate the "deep pocket" law whereby a defendant only partially responsible would be liable for the entire settlement if the codefendant has no assets.

3. Limit the liability of each responsible party to that portion of noneconomic damages that is equal to the responsible party's share of fault.

California's other new laws require more stringent insurance company financial reporting, more detailed information on troubled lines of insurance such as pollution, day care center and municipalities. Companies have pulled out of these lines calling them unprofitable.

Liability Laws Enacted in 1986

The following chart shows which states have passed legislation affecting various areas of the overall liability crisis in 1986. The asterisks in the Montana column indicate legislation that has been passed in 1987 affecting these areas.

It would be impossible in this paper to go into great detail about what actions other states have taken regarding the municipality liability crisis. Therefore, a comparative analysis of the states in regard to this matter is an area of study recommended for further study.

EXHIBIT 9

A SCORECARD OF LIABILITY-RELATED LAWS ENACTED IN 1986

Legislation has been passed affecting the following areas:	Alabama	Alaska	Arizona	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Massachusetts	Michigan	Minnesota
Caps on non-economic damages		•		•			•	•							•			•	•	•	•
Punitive damages		•		•			•	•					•								•
Joint and several liability		•	•	•	•		•	•			•									•	
Structured settlements		•			•		•	•					•	•			•	•		•	
Collateral compensation		•		•	•		•				•	•							•	•	•
Prejudgment interest accrual		•																		•	•
Frivolous lawsuits			•		•		•	•	•				•		•					•	•
Lawyers' contingency fees					•		•			•							•		•	•	
Premium rates or rollbacks							•											•	•		•
Comparative negligence											•										
Excess profits							•														
Total medical malpractice awards																					
Med mal award settlement reports	•																		•		
Municipality pools self insurance	•	•	•					•					•	•			•	•			
Private/public boards of directors; volunteers	•	•	•	•		•						•						•			
Dram shop/host liability		•		•						•		•	•				•	•		•	
Joint underwriting associations	•	•			•		•	•								•					•
Child-care liability									•									•			•
Captives									•												
Market assistance plans												•		•							
Municipality sovereign immunity					•			•				•									
Government employee immunity				•				•				•									
Cancellations/Non-renewals		•		•	•	•	•	•				•			•		•				
Domestic insurers' investments				•																	
Statute of limitations				•													•		•		
Mass marketing of lines									•												
Disclosure of loss experience		•		•	•	•						•									•
Workers' comp to group insure									•												

EXHIBIT 9 (Continued)

Legislation has been passed affecting the following areas:	Mississippi	Missouri	Alabama	New Hampshire	New Jersey	New Mexico	New York	North Carolina	Ohio	Oklahoma	Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
Caps on non-economic damages		•	•	•		•							•			•		•	•	•	•	•	•
Punitive damages			*	•					•	•			•								•		
Joint and several liability		•	*	•			•									•				•	•		•
Structured settlements			*				•				•		•			•				•			
Collateral compensation			*				•				•												
Prejudgment interest accrual		•																					
Frivolous lawsuits				•			•		•		•										•		•
Lawyers' contingency fees		•		•		•														•		•	
Premium rates or rollbacks							•														•		
Comparative negligence				•																	•		
Excess profits																							
Total medical malpractice awards													•								•		
Med' mal award/settlement reports											•												
Municipality pools/self insurance			•		•	•	•		•				•				•			•	•	•	•
Private/public boards of directors; volunteers			*	•	•		•			•			•		•	•							•
Dram shop host liability				•		•								•		•							•
Joint underwriting associations		•	•				•	•			•	•				•	•				•		
Child-care liability						•														•			
Captives																							
Market assistance plans		•	•		•				•						•	•				•			
Municipality sovereign immunity	•	•	•									•	•										•
Government employee immunity	•														•						•		
Cancellations/Non-renewals			*	•	•		•			•			•	•						•	•	•	•
Domestic insurers' investments																							
Statute of limitations			*	•			•													•	•		
Mass marketing of lines																							
Disclosure of loss experience							•		•												•		
Workers' comp to group insure																							

SOURCE: National Conference of State Legislatures, Selected State Legislative Action, July, 1986, and American Insurance Association Report, August 5, 1986.

NOTES

1. Millus, "Tort Reform: Cure or Curse?" Best's Review, p. 7.
2. Ibid.

CHAPTER X

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Conclusions

In conclusion, the major findings of this paper are as follows:

1. No one group is responsible for the Montana municipality liability crisis. The insurance industry, the legal environment, and the state regulatory system all played a part in the creation of the liability crisis.
2. No one group acting alone can solve the Montana municipality liability crisis.
3. The process of insurance underwriting is judgmental and not exact; thereby it contributes to the crisis.
4. The time lag between the establishment of legislative tort reform and the legal system's interpretation of that tort reform makes it difficult to obtain a direct linking between insurance rates and tort reform.
5. Risk-pooling is a viable alternative to standard insurance company coverage.

The value of this research is that it lays the necessary groundwork for others interested in studying the topic area. Documentation of how the crisis began and grew might serve to help avoid future crises. This research outlines the major early warning signs of the crisis; and by recognition of these signs, society might be able to prevent a future crisis.

The major early warning signs are the practice of cash-flow underwriting, the dramatic increase in the size of damage awards, and inadequate state insurance rate regulation.

Recommendations for Further Action
and Research

It is recommended that the State Insurance Department play a more active role in insurance rate regulation. When a rate is submitted to the Department for approval it should not just be judged whether or not it is excessive, but also whether or not it is adequate. This should mitigate cash-flow underwriting and bring rate stability to the Montana municipality liability insurance marketplace.

It also recommended that consistent standards for damage awards throughout Montana should be set, hopefully resulting in stability of damage awards.

The following areas for further study are recommended:

1. An analysis of the city and county risk pools five years after they were formed. Five years allows for the development of a credible loss history by insurance standards.
2. A comparative analysis of the different states' responses to the liability crisis.
3. Analysis of the Market Assistance Program five years after they began operation. Five years allows for the development of a credible loss history by insurance industry standards.

APPENDIX 1

FREQUENT QUESTIONS AND ANSWERS REGARDING THE MONTANA INSURANCE ASSISTANCE PLAN

FREQUENT QUESTIONS AND ANSWERS REGARDING THE
MONTANA INSURANCE ASSISTANCE PLAN

1. What is the Montana Insurance Assistance Plan and what is its purpose?

The Montana Insurance Assistance Plan is a temporary, voluntary market of last resort for placement of general liability and commercial insurance for the following risks:

- a) political subdivision liability, excluding pollution risks
- b) family day care homes
- c) day care centers
- d) liquor liability

The Montana Insurance Assistance Plan is run by an advisory committee of insurer, agent, and state government representatives. In addition to providing assistance in placement of insurance, the Montana Insurance Assistance Plan will develop data on the extent and nature of commercial liability problems in Montana by reviewing the applications submitted to the Plan for assistance.

2. Will other types of risks seeking general liability coverage be added to the Montana Insurance Assistance Plan?

If other commercial lines of liability coverage are found to have critical market availability problems, they can be added to the Plan. Information on market availability problems should be mailed to Montana Insurance Assistance Plan, P.O. Box 4009, Helena, MT 59604.

3. Under what authority does the Montana Insurance Assistance Plan operate?

The Montana Insurance Assistance Plan operates under the legal sanction, auspices and appointment of the Montana Insurance Commissioner. The Montana Insurance Commissioner retains all final decision-making authority regarding the Montana Insurance Assistance Plan and its operations. The Commissioner will continually review the workings of the Plan.

4. What are the committees of the Montana Insurance Assistance Plan and their functions?

The Montana Insurance Assistance Plan operates through three standing committees. The Advisory Committee directs the overall operation of the Montana Insurance Assistance Plan and reports monthly to the Montana Insurance Commissioner. The Agents Committee reviews all properly executed applications and attempts to place coverage whenever possible. The Underwriters Committee attempts to find coverage of an application that the Agents Committee is unable to assist.

5. Who may apply for assistance through the Montana Insurance Assistance Plan?

Any risk enumerated in No. 1 above, of any size, seeking general liability or commercial coverage is included. Only the business operations in Montana are eligible. The business must have been declined coverage by a minimum of two insurers plus one surplus lines agent.

6. How can an eligible risk apply for assistance?

Applications must be submitted through a licensed Montana agent. When the program has located an insurance company

willing to write a policy for an applicant, the company will negotiate directly with the agent who represents the applicant.

7. Is there a limit to the amount of insurance the Montana Insurance Assistance Plan can write for an applicant?

The limits for each policy will be negotiated on a case-by-case basis for each risk individually.

8. Will the Montana Insurance Assistance Plan assist businesses in locating any other type of insurance?

The Montana Insurance Assistance Plan was established to deal only with the types of risks enumerated in No. 1 that have demonstrated availability problems with general liability and commercial coverage. The Montana Insurance Commissioner with recommendations from the Advisory Committee can add additional risks or commercial liability coverage to the Plan if a need is demonstrated.

9. Are there any criteria used to qualify applicants for assistance by the Montana Insurance Assistance Plan?

The COVER APPLICATION has been developed by the Montana Insurance Assistance Plan for use with the normal ACORD forms. The application requires information on those insurers who declined coverage and basic descriptive information on the business. The completed application form along with the appropriate ACORD forms, and an application fee are all that is required to be considered for assistance.

10. Is there a fee for submitting an application to the Montana Insurance Assistance Plan?

The Montana Insurance Assistance Plan has set fees for each type of coverage as stated on the COVER APPLICATION. The fees are for processing the applications allowing the Plan to be self-sustaining. The fee is used only to defray actual costs of the Plan, such as postage, telephone and printing expense. No member of the Montana Insurance Assistance Plan receives any pay or remuneration. Members are reimbursed for basic expenses. The applicant must pay the fee. It is not refundable, even if the Plan fails to locate coverage. The fee must be paid by cashier's check or money order and should be made payable to The Montana Insurance Assistance Plan.

11. How will an application be processed?

When properly completed, the application will be forwarded to the Agents Committee by the Advisory Committee. Members of the Agents Committee will review applications within their area of expertise and will work for placement of the risk and negotiate terms of placement. If the Agents Committee fails, the application will be forwarded to the Underwriters Committee for possible placement. If this committee fails, it must draft a letter outlining exactly why the risk cannot be placed. This letter will be addressed to the Insurance Commissioner and must be reviewed and approved by the Advisory Committee. A letter will also be sent to the agent advising of the disposition of the application.

12. How much time will it take to process an application?

The Montana Insurance Assistance Plan will process applications as quickly as possible. Because of the lead time needed by the committees, agents should work their renewals early to identify potential problem areas and to avoid deadline crises. It is anticipated that a difficult risk could take several months to process. In these instances, the committee will negotiate with the current carrier to extend coverage until new coverage can be located. Time may, of course, vary depending on the number of applications received.

13. Where can application forms and other information be obtained?

All properly executed applications should be addressed to:

The Montana Insurance Assistance Plan
c/o Montana Insurance Department
P.O. Box 4009
Helena, MT 59604
Phone: 1-800-332-6148

Information regarding this Plan will be available from the following:

Independent Insurance Agents Association of Montana
c/o Roger McGlenn, Executive Director
P.O. Box 5593
Helena, MT 59604
Phone: 406-442-9555

or

Professional Insurance Agents
Riley Johnson, Executive Director
9 North Last Chance Gulch
Helena, MT 59601
Phone: 406-442-6424

Application Forms:

The COVER APPLICATION and the ACORD applications and/or supplemental forms where appropriate, should be completed

in their entirety. Incomplete applications may be returned.

14. Where should completed application forms be mailed?

Montana Insurance Assistance Plan
P.O. Box 4009
Helena, MT 59604

15. Does the Montana Insurance Assistance Plan guarantee coverage for the insured?

No. The Montana Insurance Assistance Plan is constituted as an assistance program, not as a carrier capable of assuming insurance risks. It has no power to guarantee successful conclusion to any assistance request. It is assumed that there may be some risks that will not find an available market for their commercial liability coverage.

16. Are all insurance companies required to accept risks placed through Montana Insurance Assistance Plan?

No. The Montana Insurance Assistance Plan is a voluntary effort to locate markets for individual coverage. The Montana Insurance Commissioner has asked all property casualty companies and surplus lines agents to participate and designate individuals within their organization to handle requests for risk placement that come through the Montana Insurance Assistance Plan. However, each company may accept or reject a risk on an individual basis. Most major property casualty companies licensed in Montana supported the formation of the Montana Insurance Assistance Plan through their associations and are willing voluntarily to assume some of the risks referred to their companies by the Montana Insurance Assistance Plan.

17. How long will the Montana Insurance Assistance Plan be in operation?

Although the program is considered a temporary solution, it will continue to function as long as applications continue to be received. The Advisory Committee of the Montana Insurance Assistance Plan will review the status of the program periodically and report its recommendations for continuation or dissolution to the Montana Insurance Commissioner.

18. Will the Montana Insurance Assistance Plan 'solve' the commercial liability "problem" in Montana?

The plan is designed to address availability problems. To the extent that coverage can be placed for the applicants, it accomplishes this purpose.

19. Is there a procedure for registering a complaint or contesting a ruling for one of the committees?

The final jurisdiction of the Montana Insurance Assistance Plan rests with the Montana Insurance Commissioner. However, the Commissioner will refer all complaints to the Advisory Committee of the Montana Insurance Assistance Plan for review prior to action by the Commissioner. Complaints can be sent to:

Montana Insurance Department
P.O. Box 4009
Helena, MT 59604
ATTN: Montana Insurance Assistance Plan

20. Is this approach to liability problems being tried in other states?

This market assistance approach to commercial liability availability problems was developed by the National Associ-

ation of Insurance Commissioners in the late 1970s. It was utilized for product liability availability problems in the late 1970s. Over half of the states have initiated similar programs for current liability insurance problems.

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APPENDIX 2

MONTANA INSURANCE ASSISTANCE PLAN PARTICIPATING
POLITICAL SUBDIVISION UNDERWRITERS

MONTANA INSURANCE ASSISTANCE PLAN PARTICIPATING
POLITICAL SUBDIVISION UNDERWRITERS

AMERICAN INTERNATIONAL GROUP (AIG)
70 Pine Street
New York, NY 10270
212-770-6650

AETNA CASUALTY AND SURETY
2201 6th Avenue, Suite 700
Seattle, WA 98121
206-441-2200

CIGNA
1600 Arch Street, 13 H.O.
Philadelphia, PA 19103
215-241-3992

CNA INSURANCE COMPANIES
Suite 808 Park Place Building
Seattle, WA 98101
206-447-5425

GREAT AMERICAN SURPLUS LINES INSURANCE COMPANIES
515 Main Street
Cincinnati, OH 45202
513-369-3000

MARYLAND CASUALTY COMPANY & SUBSIDIARIES
P.O. Box 1228
Baltimore, MD 21203
301-366-1000

NORTHWESTERN NATIONAL INSURANCE COMPANY
P.O. Box 1731
Helena, MT 596234
800-525-7414

ST. PAUL FIRE & MARINE INSURANCE COMPANY
385 Washington Street
St. Paul, MN 55102
406-248-4700

SAFECO INSURANCE COMPANIES
4909 156th Avenue NE
Redmond, WA 98082
206-881-4504

TRAVELERS COMPANIES
One Tower Square
Hartford, CT 06183
203-277-0111

UNITED PACIFIC (limited to rural fire protection districts)
33405 8th Avenue South, C-3000
Federal Way, WA 98003
206-952-5000

USF&G
P.O. Box 6107
Helena, MT 59604
406-442-2270

TUDOR INSURANCE COMPANY
48 South Franklin Turnpike
Ramsey, NJ 07446
201-825-3300

APPENDIX 3

THE MONTANA LEAGUE OF CITIES AND TOWNS

LIABILITY COVERAGE APPLICATION

NAME OF MUNICIPALITY _____

MAILING ADDRESS _____

PERSON COMPLETING SURVEY _____

1. POPULATION _____ AREA _____ (Square Miles)

2. TOTAL BUDGET: A. Current FY () \$ _____

B. Preceding FY (Actual) \$ _____

3. PAYROLL INFORMATION

	<u>Total Payroll For Classifications</u>	<u>Number of Employees</u>
Firefighter	_____	_____
Police	_____	_____
All Others	_____	_____

Total _____

4. GENERAL EXPOSURES:

Number Area

A. Housing Projects (Units)	_____	_____
B. Libraries or Museums	_____	_____
C. Parks and Playgrounds	_____	_____
D. Stadiums & Grandstands (Seating Capacity)	_____	_____
E. Swimming Pools	_____	_____
F. Exhibition Halls & Auditoriums	_____	_____
G. Permits - Construction (Number)	_____	_____
Demolition (Number)	_____	_____
All Other (Number)	_____	_____
H. Hospital _____ Yes _____ No	_____	_____
I. Operations which supply electrical power or natural gas services? (If Yes, Describe)	_____	_____

J. _____
Operations of any public transit district or the support of
any such district? (If Yes, Describe)

- K. Mini Busses (Number) _____
 L. "Dial a Ride" or similar programs _____ Yes _____ No
 M. Airport owned by City _____ Yes _____ No

5. AUTOMOBILE EXPOSURES

	<u>Number of Units</u>
A. <u>Passenger Cars</u>	
Police	_____
Fire	_____
Other	_____
B. <u>Motorcycles or Scooters</u>	
Police	_____
Other	_____
C. <u>Light Commercial</u>	
Pickups-One Ton or Less	_____
Panel Vans	_____
Service Trucks	_____
Ambulances	_____
Rescue Trucks	_____
D. <u>Heavy Commercial</u>	
Refuse Collection	_____
Fire-Pumper Trucks	_____
Fire-Other	_____
Trailers	_____
Construction Equipment	_____
Miscellaneous (Describe in Attachment)	_____

6. STREETS

- A. Mileage of City Streets _____
 B. Mileage of Other Roads Controlled or Serviced by City _____

7. POLICE DEPARTMENT

- A. Number of Sworn Officers: Full Time _____ Part Time _____
 B. Number of Reserves: Class I _____ Class II _____
 C. Number of Police Stations: _____
 D. Jail Facilities: _____ Yes _____ No Number of Cells _____
 E. Maximum Length of Detention _____
 F. Is there a Police Policy & Procedures Manual? _____ Yes _____ No
 G. Is there Written Pursuit Policy? _____ Yes _____ No

8. FIRE DEPARTMENT:

Number of Paid Firemen: Full Time _____ Part Time _____
 Volunteers _____ Paramedics _____

9. WATER DEPARTMENT:

- A. Number of Employees _____
- B. Annual Distribution (Gallons): Domestic _____ Industrial _____
- C. Source of Supply _____
- D. Dams: _____ Type _____
 Capacity in Acre Feet _____
- Include inundation map showing location and description of each dam in attachment.
- E. Reservoirs: _____ Type _____
 Capacity: _____
- F. Tanks No. _____ Type _____
 Capacity: _____

10. INCIDENTAL MEDICAL MALPRACTICE EXPOSURES:

- A. Does City operate outpatient clinic? _____ Yes _____ No
 If Yes, Describe in detail in attachment.
- B. Other medical malpractice exposures? _____ Yes _____ No

11. EXISTING OR EXPIRED COVERAGE:

- A. Are you currently insured for Liability Insurance? _____ Yes _____ No
- B. Please complete the following for your current, or last, insurance program:

<u>Policy</u> <u>Period</u>	<u>Coverage</u>	<u>Carrier</u>	<u>Deductible</u>	<u>Policy</u> <u>Limit</u>	<u>Premium</u>
_____	General Liability	_____	_____	_____	_____
_____	Errors & Omissions	_____	_____	_____	_____
_____	Law Enforcement	_____	_____	_____	_____
_____	Auto Liability	_____	_____	_____	_____
_____	Umbrella	_____	_____	_____	_____

12. SUPPLEMENTAL INFORMATION:

- A. Parks & Playgrounds - describe features and sponsored activities (including, but not limited to, trampolines, karate, boxing, mini-bike tracks, gymnasiums, sailing, boating, backpacking, camping, mountain climbing, snow skiing, etc.) (Please attach Activity Brochure if available)

- B. Swimming Pools - Number _____ Height of Boards _____
- Depth of Pools _____ Fenced? _____
- Are Lifeguards Used? _____

- C. Beach or Lakes - Frontage _____ Are Lifeguards Used? _____
- Describe special activities (boating, sailing, scubadiving, swimming facilities, etc.)

- D. Rodeos - Describe Protection for General Public? _____

Are waivers signed by participants? _____

Is Participants coverage required? _____

- E. Ambulance Service: EMT's Paramedics Other _____
- Employees (#) _____
- Volunteers (#) _____

- F. Nurses: Number _____

- G. Other Professional: Type _____ Number _____
- _____

- H. Landfill/Dump Site:

Where is the landfill located? _____

Is it located away from the public? Yes _____ No _____

Is it fenced? Yes _____ No _____

Are there any guards on duty? Yes _____ No _____

What is the contamination exposure (Trash, toxic waste, chemicals, etc.)?

The City agrees that all answers, including attachments, are deemed material and that all pertinent information has been fully disclosed. No proposal will be considered unless all questions are answered and the questionnaire is signed by an official familiar with exposures.

Signature _____ Position _____

Date _____

LIABILITY
CLAIMS EXPERIENCE

<u>July 1 thru June 30</u>	<u>No. of Claims</u>	<u>Paid</u>	<u>Reserved</u>	<u>Total</u>
1984 - 85	_____	_____	_____	_____
1983 - 84	_____	_____	_____	_____
1982 - 83	_____	_____	_____	_____
1981 - 82	_____	_____	_____	_____

Large Claims - Over \$25,000; Paid or Reserved

<u>Date of Occurrence</u>	<u>Description</u>	<u>Paid</u>	<u>Reserved</u>	<u>Total</u>	<u>Litigated: Yes or No</u>
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SPECIAL EVENT COVERAGE

QUESTIONNAIRE

City or Town: _____

Address: _____

Phone #: () _____

Person Completing Survey: _____

Title: _____

Please provide Estimated Figures for FY 1985-86

I. City, or Town, Sponsored Events

	<u>#of</u>	<u>Approx. Average Attendance</u>
A. Class I		
1. Meetings/Conventions	_____	_____
2. Musical/Theatrical Performance Indoor	_____	_____
3. Social Gatherings/Picnics	_____	_____
B. Class II		
1. Concerts (other than rock) Outside	_____	_____
2. Dances	_____	_____
3. Horse Shows	_____	_____
4. Sporting Events	_____	_____
C. Class III		
1. Rock Concerts	_____	_____
2. Rodeos	_____	_____
3. Parades	_____	_____
4. Fireworks Displays	_____	_____
5. Circuses/Carnivals	_____	_____

II. Events Sponsored by Others

A. Class I	<u>#of</u>	<u>Approx. Average Attendance</u>
1. Meetings/Conventions	_____	_____
2. Musical/Theatrical Performance Indoor	_____	_____
3. Social Gatherings/Picnics	_____	_____
B. Class II		
1. Concerts (other than rock)	_____	_____
2. Dances	_____	_____
3. Horse Shows	_____	_____
4. Sporting Events	_____	_____
C. Class III		
1. Rock Concerts	_____	_____
2. Rodeos	_____	_____
3. Parades	_____	_____
4. Fireworks Displays	_____	_____
5. Circuses/Carnivals	_____	_____

III. Policies and Procedures

- A. For sponsored, or co-sponsored events, does the city
require injury waivers of participants in athletic contest
or rodeos?

_____ Yes, always

_____ Yes, sometimes

Explain _____

_____ No

B. For events sponsored by others, are sponsors required to provide city with evidence of insurance?

_____ Yes, always

_____ Yes, sometimes

Explain _____

_____ No

Please return Questionnaire

G. T. Murray
Attn: Bob Worthington
9 Third St. N., Suite 305
Great Falls, Montana 59401

Include any brochures or promotional materials describing city sponsored events